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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

Com. Sub. for
HOUSE BILL No. 2101

(By ~~the~~ Delegate Farley)



Passed April 8, 1989

In Effect from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2101
(By DELEGATE FARLEY)

[Passed April 8, 1989; in effect from passage.]

AN ACT to repeal section fourteen-a, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article three, chapter twenty-nine of said code by adding thereto a new section, designated section twelve-b; to amend and reenact section twenty-four of said article three; and to further amend said chapter by adding thereto a new article, designated article three-b, all relating to inspection fee collections by the state fire marshal and payment of the same into special fund for the state fire commission; authorizing and setting caps on such inspection fees; providing for legislative appropriation of such fees; prohibiting the sale, possession or use of fireworks without a permit; authorizing the state fire marshal to adopt rules; fees; bond; proof of financial responsibility; providing for the licensure of electricians; providing a declaration of purpose; providing definitions; exemptions; establishing classes of licenses; setting forth minimum standards to qualify for licenses; licenses and renewal thereof; providing for applications; setting fees; providing for examinations; licensure without examination; denial suspension or revocation or licenses; providing that noncompliance is a misdemeanor offense; providing penalties; providing the state fire

marshal with certain powers; providing for the non-applicability of local ordinances in certain cases; and providing for the disposition of fees.

Be it enacted by the Legislature of West Virginia:

That section fourteen-a, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article three, chapter twenty-nine of said code be amended by adding thereto a new section, designated section twelve-b; that section twenty-four of said article three be amended and reenacted; and that said chapter twenty-nine be further amended by adding thereto a new article, designated article three-b, all to read as follows:

§29-3-12b. Fees.

1 (a) The state fire marshal may establish fees in
2 accordance with the following:

3 (1) For blasting.—Any person storing, selling or using
4 explosives shall first obtain a permit from the state fire
5 marshal. Such permit shall be valid from the first day
6 of July through the thirtieth day of June of the
7 succeeding year beginning on the first day of July, one
8 thousand nine hundred eighty-nine. The state fire
9 marshal may charge a fee not to exceed fifty dollars for
10 such permit.

11 (2) For inspections of schools or day care facilities.—
12 The state fire marshal may charge a fee of up to twenty-
13 five dollars per annual inspection for inspection of
14 schools or day care facilities: *Provided*, That only one
15 such fee may be charged per year for any building in
16 which a school and a day care facility are co-located:
17 *Provided, however*, That any school or day care facility
18 may not be charged for an inspection more than one
19 time per twelve month period.

20 (3) For inspections of hospitals or nursing homes.—
21 The state fire marshal may charge an inspection fee of
22 up to one hundred dollars per annual inspection of
23 hospitals or nursing homes: *Provided*, That any hospital
24 or nursing home may not be charged for an inspection
25 more than one time per twelve month period.

26 (4) For inspections of personal care homes or board
27 and care facilities.—The state fire marshal may charge
28 an inspection fee of up to fifty dollars per annual
29 inspection for inspections of personal care homes or
30 board and care facilities: *Provided*, That any personal
31 care home or board and care facility may not be charged
32 for an inspection more than one time per twelve month
33 period.

34 (5) For inspections of residential occupancies.—The
35 state fire marshal may charge an inspection fee of up
36 to one hundred dollars for each inspection of a residen-
37 tial occupancy. For purposes of this subdivision,
38 “residential occupancies” are those buildings in which
39 sleeping accommodations are provided for normal
40 residential purposes.

41 (6) For inspections of mercantile occupancies.—The
42 state fire marshal may charge an inspection fee of up
43 to one hundred dollars for inspections of mercantile
44 occupancies: *Provided*, That if such inspection is in
45 response to a complaint made by a member of the
46 public, the state fire marshal shall obtain from the
47 complainant an advance inspection fee of twenty-five
48 dollars. This fee shall be returned to the complainant if,
49 after the state fire marshal has made the inspection, he
50 finds that the complaint was accurate and justified, and
51 he shall thereafter collect an inspection fee of up to one
52 hundred dollars from the mercantile occupancy. If, after
53 the inspection has been performed, it appears to the
54 state fire marshal that such complaint was not accurate
55 or justified, the state fire marshal shall keep the twenty-
56 five dollar advance inspection fee obtained from the
57 complainant and may not collect any fees from the
58 mercantile occupant. For purposes of this section,
59 “mercantile occupancy” includes stores, markets and
60 other rooms, buildings or structures for the display and
61 sale of merchandise.

62 (7) For business occupancies.—The state fire marshal
63 may charge an inspection fee of up to one hundred
64 dollars for inspections of business occupancies: *Provided*,
65 That the provisions in subdivision six of this section
66 shall apply regarding complaints by the members of

67 public. For purposes of this section, “business occupan-
68 cies” are those buildings used for the transaction of
69 business, other than mercantile occupancies, for the
70 keeping of accounts and records, and similar purposes.

71 (8) For inspections of assembly occupancies.—The
72 state fire marshal may charge an inspection fee not
73 more than one time per twelve month period for the
74 inspection of assembly occupancies. The inspection fee
75 shall be assessed as follows: For class C assembly
76 facilities, an inspection fee not to exceed fifty dollars; for
77 class B assembly facilities, an inspection fee not to
78 exceed seventy-five dollars; and for class A facilities, an
79 inspection fee not to exceed one hundred dollars.

80 For purposes of this subdivision, an “assembly
81 occupancy” includes, but is not limited to, all buildings
82 or portions of buildings used for gathering together fifty
83 or more persons for such purposes as deliberation,
84 worship, entertainment, eating, drinking, amusement,
85 or awaiting transportation. For purposes of this section,
86 a “class C assembly facility” is one that accommodates
87 fifty to three hundred persons; a “class B facility” is one
88 which accommodates more than three hundred persons
89 but less than one thousand persons; and a “class A
90 facility” is one which accommodates more than one
91 thousand persons.

92 (b) The state fire marshal shall have the authority to
93 establish a fee schedule for the fire safety review of
94 plans and specifications for new and existing construc-
95 tion as set forth in this article. Such fee shall be paid
96 by such party or parties receiving the review.

97 The fee schedule shall be based upon existing and
98 projected workloads as advanced by the state fire
99 marshal and the schedule shall be clearly set forth by
100 rules and regulations promulgated by the state fire
101 commission. In no event may this fee exceed ten dollars.

102 (c) All fees authorized and collected pursuant to this
103 article and article three-b of this chapter shall be paid
104 to the state fire marshal and thereafter deposited into
105 a special account for the operation of the state fire
106 commission in administering this article and article

107 three-b of this chapter: *Provided*, That for the fiscal year
108 one thousand nine hundred ninety, expenditures from
109 said account shall be made upon authorization by the
110 governor after submission of an expenditure schedule by
111 the state fire commission. For fiscal years thereafter,
112 the Legislature shall appropriate the moneys in said
113 account by a specific numbered account in the budget
114 bill. Any amounts not expended from such account at
115 the end of a fiscal year shall expire and be transferred
116 to the general fund, unless sooner reappropriated by the
117 Legislature.

118 (d) If the owner or occupant of any occupancy
119 arranges a time and place for an inspection with the
120 state fire marshal and is not ready for the occupancy
121 to be inspected at the appointed time and place, the
122 owner or occupant thereof shall be charged the inspec-
123 tion fee provided in this section unless at least forty-
124 eight hours prior to the scheduled inspection the owner
125 or occupant requests the state fire marshal to reschedule
126 such inspection. In the event a second inspection is
127 required by the state fire marshal as a result of the
128 owner or occupant failing to be ready for the inspection
129 when the state fire marshal arrives, the state fire
130 marshal shall charge the owner or occupant of such
131 occupancy the inspection fees set forth above for each
132 inspection trip required.

**§29-3-24. Unlawful sale, possession or use of fireworks;
permit for public display.**

1 Except as hereinafter provided, no person, firm, co-
2 partnership or corporation shall offer for sale, possess,
3 expose for sale, sell at retail, keep with intent to sell at
4 retail, or use or explode any fireworks: *Provided*, That
5 the state fire marshal may adopt reasonable rules and
6 regulations for the granting of permits for the super-
7 vised displays of fireworks by municipalities, fair
8 associations, amusement parks, and other organizations
9 or groups of individuals. The state fire marshal shall
10 have the authority to charge a fee of ten dollars to each
11 applicant requesting a license to be a pyrotechnic
12 operator as set forth in this article. The state fire
13 marshal shall charge a scaled fee for all applications

14 requesting permits to establish a pyrotechnics display as
15 provided in this section. All fees required to be paid by
16 the provisions of this section shall be paid to the state
17 fire marshal and thereafter deposited by him into a
18 special account for the operation of the state fire
19 commission. Such permits may be granted upon appli-
20 cation to said state fire marshal and after approval of
21 the local police and fire authorities of the community
22 wherein the display is proposed to be held as provided
23 herein and the filing of a bond by the applicant as
24 provided hereinafter. Every such display shall be
25 handled by a competent operator licensed or certified as
26 to competency by the state fire marshal and shall be of
27 such composition, character, and so located, discharged
28 or fired as in the opinion of the chief of the fire
29 department, after proper inspection, and of the chief of
30 police as to not be hazardous to property or endanger
31 any person or persons. After such privilege shall have
32 been granted, the sale, possession, use and distribution
33 of fireworks for such display shall be lawful for that
34 purpose only. No permit granted hereunder shall be
35 transferable.

36 The governing body or chief executive authority of the
37 municipality shall require a bond from the licensee in
38 a sum not less than one thousand dollars conditioned on
39 compliance with the provisions of this article and the
40 regulations of the state fire commission: *Provided*, That
41 no municipality shall be required to file such bond.

42 Before any permit for a pyrotechnic display shall be
43 issued, the person, firm or corporation making applica-
44 tion therefor shall furnish proof of financial responsibil-
45 ity to satisfy claims for damages to property or personal
46 injuries arising out of any act or omission on the part
47 of such person, firm or corporation or any agent or
48 employee thereof, in such amount, character and form
49 as the state fire marshal determines to be necessary for
50 the protection of the public.

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-1. Declaration of purpose.

1 This article is enacted to protect the health, safety and

2 welfare of the public as well as public and private
3 property by assuring the competence of those who
4 perform electrical work through licensure by the state
5 fire marshal of the state fire commission.

§29-3B-2. Necessity of license; definitions.

1 After the effective date of this article, no electrical
2 work may be performed, offered or engaged in for
3 compensation or hire within the state of West Virginia
4 by any person, firm or corporation unless such person,
5 firm or corporation possesses a license and a certificate
6 therefor issued by the state fire marshal in accordance
7 with this article, and a copy of such license is posted on
8 any job in which electrical work is being performed for
9 hire.

10 As used in this article:

11 (a) "Apprentice electrician" means a person with
12 interest in and an aptitude for performing electrical
13 work but who alone is not capable of installing wires,
14 conduits, apparatus, equipment, fixtures and other
15 appliances.

16 (b) "Electrical contractor" means a person, firm or
17 corporation who engages in the business of electrical
18 work or employs master electricians, electricians,
19 apprentice electricians or helpers for the construction,
20 alteration or repair of any electrical wiring, equipment
21 or systems for the purposes of furnishing heat, light or
22 power.

23 (c) "Electrical work" means the installation of wires,
24 conduits, apparatus, fixtures, other appliances, equip-
25 ment or systems for transmitting, carrying or using
26 electricity for light, heat or power purposes.

27 (d) "Journeyman electrician" means a person qualified
28 by at least two years of electrical work experience to do
29 any work installing wires, conduits, apparatus, equip-
30 ment, fixtures and other appliances subject to supervi-
31 sion by a master electrician.

32 (e) "License" means a valid and current certificate of
33 competency issued by the state fire marshal.

34 (f) "Master electrician" means a person with at least
35 five years of electrical work experience, including
36 experience in all phases of electrical wiring and
37 installation, who is competent to instruct and supervise
38 the electrical work of journeyman electricians and
39 apprentice electricians.

§29-3B-3. Exemptions; nonapplicability of license requirements.

1 This article does not apply to and no license may be
2 required for (a) a person who performs electrical work
3 with respect to any property owned or leased by such
4 person; (b) a person who performs electrical work at any
5 manufacturing plant or other industrial establishment
6 as an employee of the person, firm or corporation
7 operating such plant or establishment; (c) a person who
8 performs electrical work while employed by an em-
9 ployer who engages in the business of selling appliances
10 at retail, so long as such electrical work is performed
11 incident to the installation or repair of appliances sold
12 by the employer; (d) a person who, while employed by
13 a public utility or its affiliate, performs electrical work
14 in connection with the furnishing of public utility
15 service; or (e) any government employee.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal.

1 (a) The following three classes of license may be issued
2 by the state fire marshal: "master electrician license,"
3 "journeyman electrician's license" and "apprentice
4 electrician license."

5 (b) The state fire marshal shall issue the appropriate
6 class of license to a person, firm or corporation upon a
7 finding that such person, firm or corporation possesses
8 the qualifications for the class of license to be issued.

9 (c) The qualifications for each class of license to be
10 issued are as follows:

11 (1) For a "master electrician license" a person must

12 have five years of experience in electrical work of such
13 breadth, independence and quality that such work
14 indicates that the applicant is competent to perform all
15 types of electrical work and can direct and instruct
16 journeyman electricians and apprentice electricians in
17 the performance of electrical work. Such applicant, or
18 a member of a firm or an officer of a corporation if the
19 applicant be a firm or corporation, must also pass the
20 master electrician examination given by the state fire
21 marshal with a grade of eighty percent correct or better;

22 (2) For a "journeyman electrician's license," a person
23 must have at least two years of experience in perform-
24 ing electrical work under the direction or instruction of
25 a master electrician or must have completed a formal
26 apprentice program providing actual electrical work
27 experience and training conducted by one or more
28 master electricians. Such applicant must also pass the
29 journeyman electrician's examination given by the state
30 fire marshal with a grade of eighty percent correct or
31 better;

32 (3) For an "apprentice electrician license," a person
33 must pass the apprentice electrician's examination given
34 by the state fire marshal with a grade of eighty percent
35 correct or better.

36 (d)(1) Certificates of license for a master electricians
37 license issued by the state fire marshal shall specify the
38 name of the person, firm or corporation so qualifying
39 and the name of the person, who in the case of a firm
40 shall be one of its members and in the case of a
41 corporation shall be one of its officers, passing the
42 master electrician examination.

43 (2) Licenses issued to journeyman electricians and
44 apprentice electricians shall specify the name of the
45 person who is thereby authorized to perform electrical
46 work or, in the case of apprentice electricians, to work
47 with other classes of electricians to perform electrical
48 work.

49 (e) No license issued under this article is assignable
50 or transferable.

51 (f) All licenses issued by the state fire marshal shall
52 expire on the thirtieth day of June following the year
53 of issue or renewal.

54 (g)(1) Each expiring license may be renewed without
55 need for examination and without limit as to the number
56 of times renewed, for the same class of license previously
57 issued and for the same person, firm or corporation to
58 whom it was originally issued upon payment to the state
59 fire marshal of a renewal fee of fifty dollars if such
60 application for renewal and payment of such fee is made
61 before the date of expiration of the license.

62 (2) In the case of a failure to renew a license on or
63 before the thirtieth day of June the person named in the
64 license may, upon payment of the renewal fee and an
65 additional fee of fifteen dollars, receive from the state
66 fire marshal a deferred renewal of such license which
67 shall expire on the thirtieth day of June in the ensuing
68 year. No person, firm or corporation may perform
69 electrical work upon expiration of such person's, firm's
70 or corporation's license until a deferred renewal for such
71 license is issued by the state fire marshal even if such
72 person, firm or corporation has applied for the deferred
73 renewal of such license.

§29-3B-5. Rules; applications and examinations; fees.

1 (a) The state fire marshal shall promulgate necessary
2 rules pursuant to the provisions of chapter twenty-nine-
3 a of this code to implement the provisions of this article.
4 Rules adopted by the state fire marshal and presently
5 in effect shall remain in effect until and unless the state
6 fire marshal adopts new rules, and the state fire
7 marshal may adopt any or all of the rules presently in
8 effect.

9 (b) The state fire marshal shall prepare and arrange
10 for the receipt of applications from those who intend to
11 perform electrical work in the state of West Virginia.
12 Such application shall be sufficiently detailed to enable
13 the state fire marshal to determine the presence or
14 absence of an applicant's qualifications for a license of
15 a particular class. The state fire marshal may, if he
16 considers it necessary, require applicants to supply

17 affidavits or other documents attesting to the applicant's
18 qualifications from past employers, other electricians,
19 engineers and others with knowledge of the applicant's
20 qualifications. The state fire marshal may make such
21 other inquiries as he considers necessary to determine
22 the qualifications of the applicant. An applicant
23 expressly consents to such inquiries by the state fire
24 marshal by his application.

25 (c) The state fire marshal shall prepare and arrange
26 for the giving of examinations to all applicants for
27 licensure as master electricians, journeyman electricians and apprentice electricians. There shall be a
28 separate and different examination for each class of
29 license, appropriate in subject matter, difficulty and
30 depth of understanding for each class. All examinations
31 shall be based on and derived from the national electric
32 code as promulgated from time to time by the national
33 fire protection association. A minimum grade of eighty
34 percent correct for all examinations is necessary for
35 licensure by the state fire marshal. The examinations
36 shall be given at least four times each year. The places,
37 dates and times of such examinations shall be made
38 known by public notice issued by the state fire marshal.
39 The state fire marshal may contract with the bureau of
40 vocational, technical and adult education, state department of education to perform such examinations.
42

43 (d) Each person desiring to take an examination shall
44 make written application therefor at the time designated by and on forms prescribed by the state fire
45 marshal. The applicant shall specify the class of license
46 for which he seeks licensure. The application shall be
47 accompanied by an examination fee of twenty-five
48 dollars for licenses for master electrician or journeyman
49 electrician, or by an examination fee of ten dollars for
50 an apprentice electrician license applicant. The fee is
51 not returnable.
52

53 (e) An applicant who fails to make the required
54 passing score on any examination or who lacks qualifications for the class of license desired may retake the
55 examination or change his application to request a
56 license of a lesser class upon the payment to the state
57

58 fire marshal of a fee of ten dollars together with a new
59 application. Any reexamination may be taken or new
60 application may be submitted as many times as the
61 applicant desires, but each such examination or appli-
62 cation requires the payment of the additional fee of ten
63 dollars and the making of a new application to the state
64 fire marshal. When the examination is successfully
65 passed and the requisite qualifications are established
66 by the applicant, the state fire marshal shall issue the
67 appropriate license as provided above.

§29-3B-6. License without examination; fees.

1 (a) Notwithstanding the foregoing provisions of this
2 article, any applicant for a certificate of license who
3 within ninety days following the effective date of this
4 article furnishes the state fire marshal with satisfactory
5 evidence showing that such applicant is working as a
6 journeyman electrician or master electrician in this
7 state as of the effective date of this article and that he
8 has been working for a period of one year immediately
9 prior to the effective date of this article, or any applicant
10 who gives conclusive evidence of possession of a
11 certificate of competency issued by the state fire
12 marshal prior to the effective date of this article is not
13 required to take the examination described in section
14 five of this article. Such applicant shall be issued a
15 license for the class of license the applicant's qualifica-
16 tions establish.

17 (b) Such applicant who is exempt from testing is
18 nevertheless required to submit a complete application
19 on forms prescribed by the state fire marshal accompan-
20 ied by a license fee of twenty-five dollars.

21 (c) Such license issued by the state fire marshal upon
22 application without examination expires and is eligible
23 for renewal as provided in section four of this article.

§29-3B-7. Denial of license; suspension and revocation of license.

1 (a) The state fire marshal shall deny a license to any
2 applicant who fails to make a passing grade on the
3 examination or who fails to establish or who lacks the

4 necessary qualifications for a license for the class of
5 license desired.

6 (b) The state fire marshal may upon complaint or his
7 own inquiry, after notice and hearing as provided by
8 article five, chapter twenty-nine-a of this code, suspend
9 or revoke the license of any person who holds a license
10 if:

11 (1) The license was granted upon an application or
12 documents supporting such application which mate-
13 rially misstated the terms of the applicant's qualifica-
14 tions or experience;

15 (2) Such person subscribed or vouched for such
16 misstatement by an applicant;

17 (3) Such person incompetently or unsafely performs
18 electrical work;

19 (4) Such person violated any statute of the state of
20 West Virginia, any rule lawfully promulgated by an
21 agency of the state of West Virginia or any ordinance
22 of any municipality or county of the state of West
23 Virginia which protects the consumer or public against
24 unfair, unsafe, unlawful or improper business practices;
25 or

26 (5) Such person fails to comply with any rule of the
27 state fire marshal promulgated to fulfill his responsibil-
28 ities under this article.

29 (c) Any person aggrieved by an order or decision of
30 the state fire marshal under this article is entitled to
31 judicial review as provided by section eighteen, article
32 three of this chapter and by chapter twenty-nine-a of
33 this code.

**§29-3B-8. Effect of noncompliance with article; failure to
obtain license.**

1 Any person, firm, corporation or employee thereof, or
2 any representative, member or officer of such firm or
3 corporation, individually, entering upon or engaging in
4 the business of performing any electrical work as
5 defined in this article, without obtaining the required
6 license or otherwise complying with this article, is for

7 the first offense guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined not more than one
9 hundred dollars. For a second and each subsequent
10 offense, the penalty and punishment is a fine of not less
11 than one hundred dollars nor more than five hundred
12 dollars.

13 Each day during which such electrical work is
14 performed without the required license or while in
15 noncompliance with any of the provisions of this article,
16 after official notice that such work is unlawful, is a
17 separate offense.

18 Any electrical work performed by a person, firm or
19 corporation which is determined by the state fire
20 marshal to constitute a safety or health hazard to
21 members of the public or any electrical work of an
22 extensive nature being performed by any person without
23 the required license or otherwise in noncompliance with
24 the requirements of this article or contrary to an order
25 or rule promulgated lawfully by the state fire marshal,
26 is subject to a civil action in the name of the state in
27 the circuit court of the county where such work is being
28 performed for an injunction against such person, firm
29 or corporation, enjoining such work or violation. A
30 circuit court by mandatory or prohibitory injunction
31 may compel compliance with the provisions of this
32 article, with the lawful orders of the state fire marshal
33 and with any final decision of the state fire marshal or
34 state fire commission. The state fire marshal shall be
35 represented in all such proceedings by the attorney
36 general or his assistants.

**§29-3B-9. Nonapplicability of local ordinances; exclusive
license.**

1 After the effective date of this article no municipality,
2 local government or county may require any license or
3 other evidence of competence as an electrician from any
4 person, firm or corporation who or which holds a valid
5 and current license issued pursuant to this article, as a
6 condition precedent to permission for the performance
7 of electrical work in such municipality, local govern-
8 ment jurisdiction or county.

§29-3B-10. Disposition of fees, fines and other receipts.

1 All fees or other moneys received as a result of actions
2 under this article shall be paid to the state fire marshal.
3 Such receipts shall be deposited by him in a special
4 account with the state treasurer for the use of the state
5 fire marshal in administering this article as provided in
6 subsection-c, section twelve-b, article three of this
7 chapter.

[Handwritten signature]

Enr. Com. Sub. for H. B. 2101] 16

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Fredrick L. Peeples

Chairman Senate Committee

J. L. Latta

Chairman House Committee

Originating in the House.

Takes effect from passage.

Jacob C. Whittle

Clerk of the Senate

Donald J. Hogg

Clerk of the House of Delegates

Sam R. Tucker

President of the Senate

Robert C. Bell

Speaker of the House of Delegates

The within *is approved* this the *24th*
day of *April*, 1989.

Yaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/89

Time 10:16