WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

- - -

ENROLLED

Com. Sub. for
HOUSE BILL No. 2101

(By Delegate Harley)

- - -

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article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article three, chapter twenty-nine of said code be amended by adding thereto a new section, designated section twelve-b; that section twenty-four of said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.

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

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

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

(3) For inspections of hospitals or nursing homes.—The state fire marshal may charge an inspection fee of up to one hundred dollars per annual inspection of hospitals or nursing homes: Provided, That any hospital or nursing home may not be charged for an inspection more than one time per twelve month period.
(4) For inspections of personal care homes or board and care facilities.—The state fire marshal may charge an inspection fee of up to fifty dollars per annual inspection for inspections of personal care homes or board and care facilities: Provided, That any personal care home or board and care facility may not be charged for an inspection more than one time per twelve month period.

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

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

(7) For business occupancies.—The state fire marshal may charge an inspection fee of up to one hundred dollars for inspections of business occupancies: Provided, That the provisions in subdivision six of this section shall apply regarding complaints by the members of
For purposes of this section, "business occupancies" are those buildings used for the transaction of business, other than mercantile occupancies, for the keeping of accounts and records, and similar purposes.

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

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

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

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

(c) All fees authorized and collected pursuant to this article and article three-b of this chapter shall be paid to the state fire marshal and thereafter deposited into a special account for the operation of the state fire commission in administering this article and article
three-b of this chapter: Provided, That for the fiscal year one thousand nine hundred ninety, expenditures from said account shall be made upon authorization by the governor after submission of an expenditure schedule by the state fire commission. For fiscal years thereafter, the Legislature shall appropriate the moneys in said account by a specific numbered account in the budget bill. Any amounts not expended from such account at the end of a fiscal year shall expire and be transferred to the general fund, unless sooner reappropriated by the Legislature.

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

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

Except as hereinafter provided, no person, firm, copartnership or corporation shall offer for sale, possess, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks: Provided, That the state fire marshal may adopt reasonable rules and regulations for the granting of permits for the supervised displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. The state fire marshal shall have the authority to charge a fee of ten dollars to each applicant requesting a license to be a pyrotechnic operator as set forth in this article. The state fire marshal shall charge a scaled fee for all applications
requesting permits to establish a pyrotechnics display as provided in this section. All fees required to be paid by the provisions of this section shall be paid to the state fire marshal and thereafter deposited by him into a special account for the operation of the state fire commission. Such permits may be granted upon application to said state fire marshal and after approval of the local police and fire authorities of the community wherein the display is proposed to be held as provided herein and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certified as to competency by the state fire marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the chief of the fire department, after proper inspection, and of the chief of police as to not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

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

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the state fire marshal determines to be necessary for the protection of the public.

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-1. Declaration of purpose.

This article is enacted 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 electrical work through licensure by the state
fire marshal of the state fire commission.

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

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

As used in this article:

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

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

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

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

(e) "License" means a valid and current certificate of
competency issued by the state fire marshal.
Enr. Com. Sub. for H. B. 2101] 8

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

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

This article does not apply to and no license may be required for (a) a person who performs electrical work with respect to any property owned or leased by such person; (b) a person who performs electrical work at any manufacturing plant or other industrial establishment as an employee of the person, firm or corporation operating such plant or establishment; (c) a person who performs electrical work while employed by an employer who engages in the business of selling appliances at retail, so long as such electrical work is performed incident to the installation or repair of appliances sold by the employer; (d) a person who, while employed by a public utility or its affiliate, performs electrical work in connection with the furnishing of public utility 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.

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

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

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

(1) For a "master electrician license" a person must
have five years of experience in electrical work of such breadth, independence and quality that such work indicates that the applicant is competent to perform all types of electrical work and can direct and instruct journeyman electricians and apprentice electricians in the performance of electrical work. Such applicant, or a member of a firm or an officer of a corporation if the applicant be a firm or corporation, must also pass the master electrician examination given by the state fire marshal with a grade of eighty percent correct or better;

(2) For a “journeyman electrician’s license,” a person must have at least two years of experience in performing electrical work under the direction or instruction of a master electrician or must have completed a formal apprentice program providing actual electrical work experience and training conducted by one or more master electricians. Such applicant must also pass the journeyman electrician’s examination given by the state fire marshal with a grade of eighty percent correct or better;

(3) For an “apprentice electrician license,” a person must pass the apprentice electrician’s examination given by the state fire marshal with a grade of eighty percent correct or better.

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

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

(e) No license issued under this article is assignable or transferable.
(f) All licenses issued by the state fire marshal shall expire on the thirtieth day of June following the year of issue or renewal.

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

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

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

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

(b) The state fire marshal shall prepare and arrange for the receipt of applications from those who intend to perform electrical work in the state of West Virginia. Such application shall be sufficiently detailed to enable the state fire marshal to determine the presence or absence of an applicant's qualifications for a license of a particular class. The state fire marshal may, if he considers it necessary, require applicants to supply
affidavits or other documents attesting to the applicant's qualifications from past employers, other electricians, engineers and others with knowledge of the applicant's qualifications. The state fire marshal may make such other inquiries as he considers necessary to determine the qualifications of the applicant. An applicant expressly consents to such inquiries by the state fire marshal by his application.

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

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

(e) An applicant who fails to make the required passing score on any examination or who lacks qualifications for the class of license desired may retake the examination or change his application to request a license of a lesser class upon the payment to the state
fire marshal of a fee of ten dollars together with a new
application. Any reexamination may be taken or new
application may be submitted as many times as the
applicant desires, but each such examination or appli-
cation requires the payment of the additional fee of ten
dollars and the making of a new application to the state
fire marshal. When the examination is successfully
passed and the requisite qualifications are established
by the applicant, the state fire marshal shall issue the
appropriate license as provided above.

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

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

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

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

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

(a) The state fire marshal shall deny a license to any
applicant who fails to make a passing grade on the
examination or who fails to establish or who lacks the
necessary qualifications for a license for the class of license desired.

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

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

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

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

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

or

(5) Such person fails to comply with any rule of the state fire marshal promulgated to fulfill his responsibilities under this article.

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

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

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

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

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

Any electrical work performed by a person, firm or
corporation which is determined by the state fire
marshal to constitute a safety or health hazard to
members of the public or any electrical work of an
extensive nature being performed by any person without
the required license or otherwise in noncompliance with
the requirements of this article or contrary to an order
or rule promulgated lawfully by the state fire marshal,
is subject to a civil action in the name of the state in
the circuit court of the county where such work is being
performed for an injunction against such person, firm
or corporation, enjoining such work or violation. A
circuit court by mandatory or prohibitory 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 or
state fire commission. The state fire marshal shall be
represented in all such proceedings by the attorney
general or his assistants.

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

After the effective date of this article no municipality,
local government or county may require any license or
other evidence of competence as an electrician from any
person, firm or corporation who or which holds a valid
and current license issued pursuant to this article, as a
condition precedent to permission for the performance
of electrical work in such municipality, local govern-
ment jurisdiction or county.
§29-3B-10. Disposition of fees, fines and other receipts.

All fees or other moneys received as a result of actions under this article shall be paid to the state fire marshal. Such receipts shall be deposited by him in a special account with the state treasurer for the use of the state fire marshal in administering this article as provided in subsection-c, section twelve-b, article three of this chapter.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

J. Treatter
Chairman Senate Committee

J. T. Sutter
Chairman House Committee

Originating in the House.
Takes effect from passage.

J. L. Wells
Clerk of the Senate

Donald J. Harrell
Clerk of the House of Delegates

Harry B. Hanford
President of the Senate

Robert C. Barnwell
Speaker of the House of Delegates

The within is approved this the 26th day of April, 1989.

Gaston Caperton
Governor