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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4392

(By Delegates Morgan, Diserio, Jones,
D. Poling and Barker)



Passed March 6, 2014

In effect ninety days from passage.

HB 4392

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FOR

H. B. 4392

(BY DELEGATES MORGAN, DISERIO, JONES,
D. POLING AND BARKER)

[Passed March 6, 2014; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-16-1, §21-16-2, §21-16-3, §21-16-4, §21-16-5, §21-16-6, §21-16-7, §21-16-8, §21-16-9 and §21-16-10; to amend and reenact §29-3-12b of said code; and to amend and reenact sections §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7 and §29-3D-8 of said code, all relating to regulating persons who perform work on heating, ventilating and cooling systems and dampers; defining terms; requiring persons who perform work on heating, ventilating and cooling systems to be licensed by the Commissioner of Labor; requiring persons who perform work on dampers to be licensed by the State Fire Marshal; providing for exemptions from licensure;

providing a scope of practice for heating, ventilating and cooling technicians and technicians-in-training; authorizing the commissioner to promulgate legislative rules; authorizing the State Fire Marshal to promulgate legislative rules; authorizing enforcement procedures; authorizing interagency agreements; authorizing the issuance, renewal, denial, suspension and revocation of licenses; authorizing fines for violation of articles; providing for criminal penalties; providing that no political subdivision of the state may mandate additional licensing requirements; and authorizing and providing for the disposition of fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-16-1, §21-16-2, §21-16-3, §21-16-4, §21-16-5, §21-16-6, §21-16-7, §21-16-8, §21-16-9 and §21-16-10; that §29-3-12b of said code be amended and reenacted; and that §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7 and §29-3D-8 of said code be amended and reenacted, all to read as follows:

CHAPTER 21. LABOR

ARTICLE 16. REGULATION OF HEATING, VENTILATING AND COOLING WORK.

§21-16-1. Declaration of purpose.

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

§21-16-2. Definitions.

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

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

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

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

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

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

26 (c) "HVAC Technician" means a person licensed to install,
27 test, maintain and repair heating, ventilating and cooling
28 systems.

29 (d) "HVAC Technician in Training" means a person with
30 interest in and an aptitude for performing installation,
31 maintenance and repair work to a heating, ventilating and
32 cooling system as defined in this article, but who alone is not
33 capable or authorized to perform heating, ventilating and cooling
34 system work unless directly supervised by a HVAC technician.

35 (e) "License" means a valid and current license issued by the
36 Commissioner of Labor in accordance with the provisions of this
37 article.

38 (f) "Routine maintenance" means work performed on a
39 routine schedule that includes cleaning and/or replacing filters,
40 greasing or lubricating motor bearings, adjusting and/or
41 replacing belts, checking system temperature, checking gas
42 temperature, adjusting gas pressure as required, and checking
43 voltage and amperage draw on heating, ventilating and cooling
44 systems.

45 (g) "Single family dwelling" means a building which is
46 occupied as, or designed or intended for occupancy as, a single
47 residence for one or more persons.

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

1 (a) On and after January 1, 2016, a person performing or
2 offering to perform work on a heating, ventilating and cooling
3 system in this state shall have a license issued by the
4 Commissioner of Labor, in accordance with the provisions of
5 this article and the legislative rules promulgated pursuant hereto.

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

9 (c) This article does not apply to:

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

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

18 (3) A person who performs only electrical or plumbing work
19 on a heating, ventilating and cooling system, so long as the work
20 is within the scope of practice which the person is otherwise
21 licensed or authorized to perform; or

22 (4) A person who performs routine maintenance as a direct
23 employee of the person, firm or corporation that owns or
24 operates the facility where the heating, ventilating or cooling
25 system equipment is located.

§21-16-4. Scope of practice.

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

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

6 (c) Persons licensed under this article are subject to the
7 applicable provisions of the Contractor Licensing Act in article
8 eleven of this chapter in the performance of work authorized by
9 this article.

§21-16-5. Rule-making authority.

1 The Commissioner of Labor shall propose rules for
2 legislative approval, in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code, for the implementation
4 and enforcement of the provisions of this article, which shall
5 provide:

6 (1) Standards and procedures for issuing and renewing
7 licenses, applications, examinations and qualifications;

8 (2) Provisions for the granting of licenses, without
9 examination, to applicants who present satisfactory evidence no
10 later than July 1, 2016, of having at least two thousand hours of

11 experience and/or training working on heating, ventilating and
12 cooling systems and at least six thousand hours of experience
13 and/or training in heating, ventilating and cooling or relating
14 work, to include other sheet metal industry tasks: *Provided*, That
15 if a license issued under the authority of this subsection
16 subsequently lapses, the applicant is subject to all licensure
17 requirements, including the examination;

18 (3) Reciprocity provisions;

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

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

23 (6) Enforcement procedures; and

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

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

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

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

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

1 (a) The Commissioner of Labor may deny a license to any
2 applicant who fails to comply with the provisions of this article

3 or the rules established by the Commissioner of Labor or who
4 lacks the necessary qualifications.

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

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

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

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

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

§21-16-8. Penalties.

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

7 (b) A person continuing to perform, or an employer
8 continuing to authorize a person not exempt by the provisions of
9 section three of this article, to perform, heating, ventilating and
10 cooling work after the issuance of a cease and desist order is
11 guilty of a misdemeanor and, upon conviction thereof, is subject
12 to the following penalties:

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

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

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

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

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

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

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

36 (e) Any person adversely affected by an action of the
37 Commissioner of Labor may appeal the action pursuant to
38 chapter twenty-nine-a of this code.

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

1 On and after January 1, 2016, a political subdivision of this
2 state may not require, as a condition precedent to the

3 performance of work on heating, ventilating and cooling in the
4 political subdivision, a person who holds a valid and current
5 license issued under this article, to have any other license or
6 other evidence of competence beyond those required by the
7 Commissioner of Labor to perform work on heating, ventilating
8 and cooling systems.

§21-16-10. Disposition of fees.

1 All fees paid pursuant to this article, shall be paid to the
2 Commissioner of Labor and deposited in "West Virginia
3 Contractor Licensing Board Fund" for the use of the
4 Commissioner of Labor in a manner consistent with section
5 seventeen, article eleven, chapter twenty-one of this Code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12b. Fees.

1 (a) The State Fire Marshal may establish fees in accordance
2 with the following:

3 (1) For blasting. — Any person storing, selling or using
4 explosives shall first obtain a permit from the State Fire Marshal.
5 The permit shall be valid for one year. The State Fire Marshal
6 may charge a fee for the permit.

7 (2) For inspections of schools or day-care facilities. — The
8 State Fire Marshal may charge a fee of up to \$25.00 per annual
9 inspection for inspection of schools or day-care facilities:
10 Provided, That only one such fee may be charged per year for
11 any building in which a school and a day-care facility are
12 colocated: *Provided, however,* That any school or day-care
13 facility may not be charged for an inspection more than one time
14 per twelve-month period.

15 (3) For inspections of hospitals or nursing homes. — The
16 State Fire Marshal may charge an inspection fee of up to \$100.00

17 per annual inspection of hospitals or nursing homes: *Provided*,
18 That any hospital or nursing home may not be charged for an
19 inspection more than one time per twelve-month period.

20 (4) For inspections of personal care homes or board and care
21 facilities. — The State Fire Marshal may charge an inspection
22 fee of up to \$50.00 per annual inspection for inspections of
23 personal care homes or board and care facilities: *Provided*, That
24 any personal care home or board and care facility may not be
25 charged for an inspection more than one time per twelve-month
26 period.

27 (5) For inspections of residential occupancies. — The State
28 Fire Marshal may charge an inspection fee of up to \$100.00 for
29 each inspection of a residential occupancy. For purposes of this
30 subdivision, “residential occupancies” are those buildings in
31 which sleeping accommodations are provided for normal
32 residential purposes.

33 (6) For inspections of mercantile occupancies. — The State
34 Fire Marshal may charge an inspection fee of up to \$100.00 for
35 inspections of mercantile occupancies: *Provided*, That if the
36 inspection is in response to a complaint made by a member of
37 the public, the State Fire Marshal shall obtain from the
38 complainant an advance inspection fee of \$25.00. This fee shall
39 be returned to the complainant if, after the State Fire Marshal has
40 made the inspection, he or she finds that the complaint was
41 accurate and justified, and he or she shall thereafter collect an
42 inspection fee of up to \$100.00 from the mercantile occupancy.
43 If, after the inspection has been performed, it appears to the State
44 Fire Marshal that the complaint was not accurate or justified, the
45 State Fire Marshal shall keep the \$25.00 advance inspection fee
46 obtained from the complainant and may not collect any fees
47 from the mercantile occupant. For purposes of this section,
48 “mercantile occupancy” includes stores, markets and other
49 rooms, buildings or structures for the display and sale of
50 merchandise.

51 (7) For business occupancies. — The State Fire Marshal may
52 charge an inspection fee of up to \$100.00 for inspections of
53 business occupancies: *Provided*, That the provisions in
54 subdivision (6) of this section shall apply regarding complaints
55 by members of the public. For purposes of this section, “business
56 occupancies” are those buildings used for the transaction of
57 business, other than mercantile occupancies, for the keeping of
58 accounts and records and similar purposes.

59 (8) For inspections of assembly occupancies. — The State
60 Fire Marshal may charge an inspection fee not more than one
61 time per twelve-month period for the inspection of assembly
62 occupancies. The inspection fee shall be assessed as follows: For
63 Class C assembly facilities, an inspection fee not to exceed
64 \$50.00; for Class B assembly facilities, an inspection fee not to
65 exceed \$75.00; and for Class A facilities, an inspection fee not
66 to exceed \$100.00.

67 For purposes of this subdivision, an “assembly occupancy”
68 includes, but is not limited to, all buildings or portions of
69 buildings used for gathering together fifty or more persons for
70 such purposes as deliberation, worship, entertainment, eating,
71 drinking, amusement or awaiting transportation. For purposes of
72 this section, a “Class C assembly facility” is one that
73 accommodates fifty to three hundred persons; a “Class B
74 facility” is one which accommodates more than three hundred
75 persons but less than one thousand persons; and a “Class A
76 facility” is one which accommodates more than one thousand
77 persons.

78 (b) The State Fire Marshal may collect fees for the fire
79 safety review of plans and specifications for new and existing
80 construction. Fees shall be paid by the party or parties receiving
81 the review.

82 (1) Structural barriers and fire safety plans review. — The
83 fee is \$1.00 for each \$1,000.00 of construction cost up to the first

84 \$1 million. Thereafter, the fee is eighty cents for each \$1,000.00
85 of construction cost.

86 (2) Sprinkler system review. — The fee charged for the
87 review of an individual sprinkler system is as follows: Number
88 of heads: One to two hundred — \$85.00; two hundred one to
89 three hundred — \$100.00; three hundred one to seven hundred
90 fifty — \$120.00; over seven hundred fifty — \$120.00 plus ten
91 cents per head over seven hundred fifty.

92 (3) Fire alarm systems review. — The fee charged for the
93 review of a fire alarm system is \$50.00 for each ten thousand
94 square feet of space with a \$50.00 minimum charge.

95 (4) Range hood extinguishment system review. — The fee
96 is \$25.00 per individual system reviewed.

97 (5) Carpet specifications. — The fee for carpet review and
98 approval is \$20.00 per installation.

99 (c) All fees authorized and collected pursuant to this article,
100 article three-b, article three-c and article three-d of this chapter
101 shall be paid to the state fire commission and thereafter
102 deposited into the special account in the state treasury known as
103 the “fire marshal fees fund”. Expenditures from the fund shall be
104 for the purposes set forth in this article and articles three-b,
105 three-c and three-d of this chapter and are not authorized from
106 collections but are to be made only in accordance with
107 appropriation by the Legislature and in accordance with the
108 provisions of article three, chapter twelve of this code and upon
109 fulfillment of the provisions of article two, chapter five-a of this
110 code. Any balance remaining in the special account at the end of
111 any fiscal year shall be reappropriated to the next fiscal year.

112 (d) If the owner or occupant of any occupancy arranges a
113 time and place for an inspection with the State Fire Marshal and
114 is not ready for the occupancy to be inspected at the appointed
115 time and place, the owner or occupant thereof shall be charged

116 the inspection fee provided in this section unless at least
117 forty-eight hours prior to the scheduled inspection the owner or
118 occupant requests the State Fire Marshal to reschedule the
119 inspection. In the event a second inspection is required by the
120 State Fire Marshal as a result of the owner or occupant failing to
121 be ready for the inspection when the State Fire Marshal arrives,
122 the State Fire Marshal shall charge the owner or occupant of the
123 occupancy the inspection fees set forth above for each inspection
124 trip required.

125 (e) The fees provided for in this section shall remain in
126 effect until such time as the Legislature has approved rules
127 promulgated by the State Fire Marshal, in accordance with the
128 provisions of article three, chapter twenty-nine-a of this code,
129 establishing a schedule of fees for services.

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-1. Declaration of purpose.

1 The provisions of this article are intended to protect the
2 health, safety and welfare of the public as well as public and
3 private property by assuring the competence of those who
4 perform fire protection work and damper work through licensure
5 by the State Fire Marshal.

§29-3D-2. Definitions.

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

3 (a) "Combination Fire/Smoke Damper" means a device that
4 meets both fire damper and smoke damper requirements.

5 (b) "Damper" means a fire damper, smoke damper or
6 combination fire/smoke damper.

7 (c) "Damper work" means to install, test, maintain or repair
8 a damper.

9 (d) "Engineered Suppression Systems Installer" means a
10 person certified by a manufacturer to install, alter, extend,
11 maintain, layout or repair an agent suppression system.

12 (e) "Engineered Suppression Systems Technician" means a
13 person certified by a manufacturer to maintain or repair an agent
14 suppression system.

15 (f) "Fire damper" means a device installed in an air
16 distribution system, designed to close automatically upon
17 detection of heat, to interrupt migratory airflow and to restrict
18 the passage of flame. Fire dampers are classified for use in either
19 static systems or for dynamic systems, where the dampers are
20 rated for closure under airflow.

21 (g) "Fire protection damper technician" means a person
22 certified to install, test, maintain or repair a damper.

23 (h) "Fire protection damper technician in training" means a
24 person with interest in and an aptitude for performing
25 installation, maintenance or repair work to a damper as defined
26 in this article, but who alone is not capable or authorized to
27 perform damper work unless directly supervised by a Fire
28 Protection Damper Technician.

29 (i) "Fire protection layout technician" is an individual who
30 has achieved National Institute for Certification in Engineering
31 Technologies (NICET) Level III or higher certification, and who
32 has the knowledge, experience and skills necessary to layout fire
33 protection systems based on engineering design documents.

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

39 (k) "Fire protection work" means the installation, alteration,
40 extension, maintenance, or testing of all piping, materials and

41 equipment inside a building, including the use of shop drawings
42 prepared by a fire protection layout technician, in connection
43 with the discharge of water, other special fluids, chemicals or
44 gases and backflow preventers for fire protection for the express
45 purpose of extinguishing or controlling fire.

46 (l) "Journeyman sprinkler fitter" means a person qualified by
47 at least ten thousand hours of work experience installing,
48 adjusting, repairing and dismantling fire protection systems and
49 who is competent to instruct and supervise the fire protection
50 work of a sprinkler fitter in training.

51 (m) "License" means a valid and current license issued by
52 the State Fire Marshal in accordance with the provisions of this
53 article.

54 (n) "Portable Fire Extinguisher Technician" means a person
55 certified in accordance with NFPA 10 to install, maintain, repair
56 and certify portable fire extinguishers as defined by NFPA 10.

57 (o) "Preengineered Suppression Systems Installer" means a
58 person certified by a manufacturer to install, alter, extend,
59 maintain, layout or repair an agent suppression system.

60 (p) "Preengineered Suppression Systems Technician" means
61 a person certified to maintain or repair an agent suppression
62 system.

63 (q) "Single family dwelling" means a building which is
64 occupied as, or designed or intended for occupancy as, a single
65 residence for one or more persons.

66 (r) "Smoke Damper" means a device within an operating
67 (dynamic) air distribution system to control the movement of
68 smoke.

69 (s) "Sprinkler fitter in training" means a person with interest
70 in and an aptitude for performing fire protection work but who

71 alone is not capable of performing such work, and who has fewer
72 than ten thousand hours of experience installing, adjusting,
73 repairing and dismantling fire protection systems.

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

1 (a) On and after January 1, 2009, a person performing or
2 offering to perform fire protection work in this state shall have
3 a license issued by the State Fire Marshal, in accordance with the
4 provisions of this article.

5 (b) On and after January 1, 2016, a person performing or
6 offering to perform damper work in this state shall have a license
7 issued by the State Fire Marshal, in accordance with the
8 provisions of this article and the legislative rules promulgated
9 pursuant hereto: *Provided*, That a person may not be licensed to
10 perform damper work in this state without first being licensed as
11 a HVAC technician pursuant to the provisions of article sixteen,
12 chapter twenty-one of this code.

13 (c) A person licensed under this article must carry a copy of
14 the license on any job in which fire protection work is being
15 performed.

16 (d) This article does not apply to:

17 (1) A person who personally performs fire protection work
18 or damper work on a single family dwelling owned or leased,
19 and occupied by that person;

20 (2) A person who performs fire protection work or damper
21 work at any manufacturing plant or other industrial
22 establishment as an employee of the person, firm or corporation
23 operating the plant or establishment;

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

27 (4) A person who performs fire protection work while
28 engaging in the business of installing, altering or repairing water
29 distribution or drainage lines outside the foundation walls of a
30 building, public or private sewage treatment or water treatment
31 systems including all associated structures or buildings, sewers
32 or underground utility services;

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

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

§29-3D-4. Rule-making authority.

1 The State Fire Marshal shall propose rules for legislative
2 approval, in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, for the implementation and
4 enforcement of the provisions of this article, which shall
5 provide:

6 (1) Standards and procedures for issuing and renewing
7 licenses, including classifications of licenses as defined in this
8 article, applications, examinations and qualifications: *Provided,*
9 That the rules shall require a person to be licensed as a HVAC
10 technician or HVAC technician in training pursuant to article
11 sixteen, chapter twenty-one of this code and the rules
12 promulgated pursuant thereto, before being granted a license to
13 perform damper work pursuant to this article;

14 (2) Provisions for the granting of licenses without
15 examination, to applicants who present satisfactory evidence of
16 having the expertise required to perform fire protection work at
17 the level of the classifications defined in this article and who

18 apply for licensure on or before July 1, 2009: *Provided*, That if
19 a license issued under the authority of this subsection
20 subsequently lapses, the applicant is subject to all licensure
21 requirements, including the examination;

22 (3) Provisions for the granting of licenses without
23 examination, to applicants who present satisfactory evidence of
24 having the expertise required to perform damper work at the
25 level of the classifications defined in this article and who apply
26 for licensure on or before July 1, 2016: *Provided*, That if a
27 license issued under the authority of this subsection subsequently
28 lapses, the applicant is subject to all licensure requirements,
29 including the examination;

30 (4) Reciprocity provisions;

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

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

35 (7) Enforcement procedures; and

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

§29-3D-5. Enforcement.

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

7 (b) The State Fire Marshal may enter into an interagency
8 agreement with the Commissioner of Labor for the mutual

9 purpose of enforcing this article and article sixteen, chapter
10 twenty-one of this code.

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

1 (a) The State Fire Marshal may deny a license to any
2 applicant who fails to comply with the rules established by the
3 State Fire Marshal, or who lacks the necessary qualifications.

4 (b) The State Fire Marshal may, upon complaint or upon his
5 or her own inquiry, and after notice to the licensee, suspend or
6 revoke a licensee's license if:

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

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

12 (3) The licensee incompetently or unsafely performs
13 plumbing, fire protection work or damper work; or

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

§29-3D-7. Penalties.

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

4 (b) On and after January 1, 2016, a person performing or
5 offering to perform, or an employer authorizing a person not
6 exempt by the provisions of section three of this article, to
7 perform, damper work without a license issued by the State Fire
8 Marshal, is subject to a citation.

9 (c) Any person continuing to engage in fire protection work
10 or damper work after the issuance of a citation is guilty of a
11 misdemeanor and, upon conviction thereof, is subject to the
12 following penalties:

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

15 (2) For the second offense, a fine of not less than \$500 nor
16 more than \$2,000, or confinement in jail for not more than six
17 months, or both;

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

21 (d) Each day after a citation is given that a person continues
22 to perform, or an employer continues to authorize a person to
23 perform, fire protection work or damper work, which is not
24 exempt by the provisions of section three of this article, is a
25 separate offense and punishable accordingly.

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

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

35 (3) The State Fire Marshal shall be represented in all such
36 proceedings by the Attorney General or his or her assistants.

37 (f) Any person adversely affected by an action of the State
38 Fire Marshal may appeal the action pursuant to the provisions of
39 chapter twenty-nine-a of this code.

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

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

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

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

Danny Wells
 Chairman, House Committee

[Signature]
 Member ~~Chairman~~, Senate Committee

Originating in the House.

In effect ninety days from passage.

Suzanne B. Soy
 Clerk of the House of Delegates

Joseph M. Minard
 Clerk of the Senate

[Signature]
 Speaker of the House of Delegates

[Signature]
 President of the Senate

The within *is approved* this the *28th*
 day of *March*, 2014.

Carl Ray Tomblin
 Governor

PRESENTED TO THE GOVERNOR

MAR 28 2014

Time 10:45 am