Committee Substitute

for

House Bill 4352

BY DELEGATES JENNINGS, MAYNARD, BIBBY, LOVEJOY,
MILLER, PACK, SYPOLT, WORRELL, WAXMAN, HARDY AND
SUMMERS

[Passed March 3, 2020; in effect ninety days from passage.]
Committee Substitute

for

House Bill 4352

BY DELEGATES JENNINGS, MAYNARD, BIBBY, LOVEJOY, MILLER, PACK, SYPOLT, WORRELL, WAXMAN, HARDY AND SUMMERS

[Passed March 3, 2020; in effect ninety days from passage.]
AN ACT to amend and reenact §29-3B-4 and §29-3B-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-3C-4 of said code; and to amend and reenact §29-3D-2 and §29-3D-6 of said code, all relating to licenses issued by the Fire Marshal; removing the use of post-criminal conduct in professional and occupational initial licensure or certification in decision making; creating a rational nexus requirement between prior criminal conduct and initial licensure or certification in decision making; providing criteria for the State Fire Marshal as licensing or certification authority to determine whether a criminal conviction has a rational nexus to an occupation; limiting licensure disqualification; authorizing persons to petition the State Fire Marshal as to whether a person’s criminal records precludes licensure; and reducing the number of necessary hours as a qualification for licensure as a journeyman sprinkler fitter or sprinkler fitter in training.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§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; reciprocity.

(a) The following classes of license may be issued by the State Fire Marshal: “Master electrician license,” “journeyman electrician license,” “apprentice electrician license” and “temporary electrician license.” Additional classes of specialty electrician license may be issued by the State Fire Marshal.

(b) The State Fire Marshal shall issue the appropriate class of license upon a finding that the applicant possesses the qualifications for the class of license to be issued. When considering whether an applicant possess the qualifications for the class of license, the State Fire Marshal shall consider whether an applicant’s prior criminal convictions bear a rational nexus on the license being sought.
(1) The State Fire Marshal may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the State Fire Marshal shall consider at a minimum:

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

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

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

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

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

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

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

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

(3) An individual with a criminal record who has not previously applied for licensure may petition the State Fire Marshal at any time for a determination of whether the individual’s criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual’s criminal record to enable the State Fire Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction.
(c) The State Fire Marshal shall propose rules for legislative approval regarding qualifications for testing, issuance of licenses, and renewal in accordance with the provisions of §29A-3-1 et seq., of this code.

(d) To the extent that other jurisdictions provide for the licensing of electricians, the State Fire Marshal may grant the same or equivalent classification of license without written examination upon satisfactory proof furnished to the state Fire Marshal that the qualifications of the applicant are equal to the qualifications required by this article and upon payment of the required fee: Provided, That as a condition to reciprocity, the other jurisdictions must extend to licensed electricians of this state, the same or equivalent classification.

(e) In addition to any other information required, the applicant’s social security number shall be recorded on any application for a license submitted pursuant to the provisions of this section.

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

(a) The State Fire Marshal may deny a license to any applicant who fails to comply with the rules established by the State Fire Marshal, or who lacks the necessary qualifications; Provided, That the State Fire Marshal shall apply §29-3B-4(b) when determining if an applicant is eligible for licensure.

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

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

(2) The licensee subscribed or vouched for a material misstatement by an applicant;

(3) The licensee incompetently or unsafely performs electrical work; or

(4) The licensee fails to comply with any rule of the State Fire Marshal promulgated to fulfill his or her 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.

ARTICLE 3C. CERTIFICATION OF ELECTRICAL INSPECTORS.

§29-3C-4. Certification program; duties of the State Fire Marshal; rulemaking.

(a) The State Fire Marshal shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq., of this code to establish a program for the certification of electrical inspectors. Proposed rules shall provide: Standards and procedures for certification, including applications, examinations, fees, qualifications, procedures for investigating complaints, revoking or suspending certifications and for renewing licenses. The State Fire Marshal is also authorized to propose emergency rules to implement the provisions of this article: Provided, That the emergency rules specify an initial certification fee of $50.

(b) The State Fire Marshal shall certify an electrical inspector upon a finding that the applicant possesses the requisite qualifications.

(c) When considering whether an applicant possess the qualifications for certification as an electrical inspector, the State Fire Marshal shall consider whether an applicant’s prior criminal convictions bear a rational nexus on the certification being sought.

(1) The State Fire Marshal may not disqualify an applicant from initial certification because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring certification. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the State Fire Marshal shall consider at a minimum:

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

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

(C) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and
(D) Any evidence of rehabilitation or treatment undertaken by the individual.

(2) Notwithstanding any other provision of this code to the contrary, if an applicant is disqualified from certification because of a prior criminal conviction, the State Fire Marshal shall permit the applicant to apply for initial certification if:

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

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

(C) The conviction was not for an offense of a violent or sexual nature: Provided, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from certification, to be determined by the State Fire Marshal.

(3) An individual with a criminal record who has not previously applied for certification may petition the State Fire Marshal at any time for a determination of whether the individual’s criminal record will disqualify the individual from obtaining a certification. This petition shall include sufficient details about the individual’s criminal record to enable the State Fire Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction.

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-2. Definitions.

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

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

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

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

“Engineered Suppression Systems Installer” means a person certified by a manufacturer to install, alter, extend, maintain, layout or repair an agent suppression system.
“Engineered Suppression Systems Technician” means a person certified by a manufacturer to maintain or repair an agent suppression system.

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

“Fire protection damper technician” means a person certified to install, test, maintain or repair a damper.

“Fire protection damper technician in training” means a person with interest in and an aptitude for performing installation, maintenance or repair work to a damper as defined in this article, but who alone is not capable or authorized to perform damper work unless directly supervised by a Fire Protection Damper Technician.

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

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

“Fire protection work” means the installation, alteration, extension, maintenance, or testing of all piping, materials and equipment inside a building, including the use of shop drawings prepared by a fire protection layout technician, in connection with the discharge of water, other special fluids, chemicals or gases and backflow preventers for fire protection for the express purpose of extinguishing or controlling fire.
“Journeyman sprinkler fitter” means a person qualified by at least 5,000 hours of work experience installing, adjusting, repairing and dismantling fire protection systems and who is competent to instruct and supervise the fire protection work of a sprinkler fitter in training.

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

“Portable Fire Extinguisher Technician” means a person certified in accordance with NFPA 10 to install, maintain, repair and certify portable fire extinguishers as defined by NFPA 10.

“Preengineered Suppression Systems Installer” means a person certified by a manufacturer to install, alter, extend, maintain, layout or repair an agent suppression system.

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

“Single family dwelling” means a building which is occupied as, or designed or intended for occupancy as, a single residence for one or more persons.

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

“Sprinkler fitter in training” means a person with interest in and an aptitude for performing fire protection work but who alone is not capable of performing such work, and who has fewer than 5,000 hours of experience installing, adjusting, repairing and dismantling fire protection systems.

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

(a) The State Fire Marshal may deny a license to any applicant who fails to comply with the rules established by the State Fire Marshal, or who lacks the necessary qualifications. When considering whether an applicant possess the qualifications for a license, the State Fire Marshal shall consider whether an applicant’s prior criminal convictions bear a rational nexus on the license being sought.
(1) The State Fire Marshal may not disqualify an applicant from initial licensure because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the activity requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the State Fire Marshal shall consider at a minimum:

(A) The nature and seriousness of the crime for which the individual was convicted;
(B) The passage of time since the commission of the crime;
(C) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and
(D) Any evidence of rehabilitation or treatment undertaken by the individual.

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

(A) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;
(B) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and
(C) The conviction was not for an offense of a violent or sexual nature: Provided, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the State Fire Marshal.

(3) An individual with a criminal record who has not previously applied for licensure may petition the State Fire Marshal at any time for a determination of whether the individual’s criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual’s criminal record to enable the State Fire Marshal to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction.
(b) The State Fire Marshal may, upon complaint or upon his or her own inquiry, and after notice to the licensee, suspend or revoke a licensee’s license if:

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

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

(3) The licensee incompetently or unsafely performs plumbing, fire protection work or damper work.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman, House Committee

[Signature]
Chairman, Senate Committee

Originating in the House.
In effect ninety days from passage.

[Signature]
Clerk of the House of Delegates

[Signature]
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
President of the Senate

The within is approved this the 25th day of March 2020.

[Signature]
Governor