

H. B. 4366

(By Delegates Morgan, Stephens, D. Poling,
Hatfield and Butcher)

[Introduced February 1, 2012; referred to the
Committee on Government Organization then the Judiciary.]

A BILL to repeal §21-3-2, §21-3-3, §21-3-3a, §21-3-4, §21-3-5,
§21-3-6, §21-3-8, §21-3-9, §21-3-10, §21-3-11, §21-3-12,
§21-3-13, §21-3-16 and §21-3-18 of the Code of West Virginia,
1931, as amended; and to amend, reenact and redesignate
§21-3-7, §21-3-10a, §21-3-14, §21-3-15, §21-3-17, §21-3-19,
§21-3-20 and §21-3-21, all relating to safety and welfare of
employees; relating to the regulation of steam boilers by the
Division of Labor; relating to meal breaks; relating to the
power of the Commissioner of Labor as to witnesses; relating
to the records and reports of the Commissioner of Labor;
relating to employers not to require payment of fees for
medical examination as condition of employment; providing that
discrimination for use of tobacco products is prohibited;
prohibiting the use of video and other electronic surveillance
devices by employers; and continuing a special revenue fund

1 for the Division of Labor.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §21-3-2, §21-3-3, §21-3-3a, §21-3-4, §21-3-5, §21-3-6,
4 §21-3-8, §21-3-9, §21-3-10, §21-3-11, §21-3-12, §21-3-13, §21-3-16
5 and §21-3-18 of the Code of West Virginia, 1931, as amended, be
6 repealed; and that §21-3-7, §21-3-10a, §21-3-14, §21-3-15,
7 §21-3-17, §21-3-19, §21-3-20 and §21-3-21 be amended, reenacted and
8 redesignated, all to read as follows:

9 **ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.**

10 **§21-3-2. Regulation of operation of steam boilers.**

11 Any person owning or operating a steam boiler carrying more
12 than fifteen pounds pressure per square inch (except boilers on
13 railroad locomotives subject to inspection under federal laws,
14 portable boilers used for agricultural purposes, boilers on
15 automobiles, boilers of steam fire engines brought into the state
16 for temporary use in times of emergency for the purpose of checking
17 conflagrations, boilers used in private residences which are used
18 solely for residential purposes, any sectional boilers, small
19 portable boilers commonly used in the oil and gas industry about
20 their wells and tool houses, and boilers under the jurisdiction of
21 the United States) in this state shall first obtain a permit to
22 operate a steam boiler from the commissioner of labor, or from an
23 inspector working under his or her jurisdiction.

24 Applications for permits to operate a steam boiler must be

1 accompanied by a sworn statement made by the owner or operator of
2 ~~such~~ the boiler, setting forth the condition of the boiler and its
3 appurtenances at which time, if the facts disclosed by ~~such~~ the
4 statement meet the safety requirements established under this
5 article, the commissioner of labor shall issue a temporary permit,
6 which shall be valid until ~~such~~ the boiler has been inspected by a
7 boiler inspector authorized by the State Commissioner of Labor;
8 thereupon, if the boiler meets the safety requirements established
9 under this article, the commissioner of labor shall issue an annual
10 permit to operate ~~such~~ the steam boiler: *Provided*, That boilers
11 which are insured by an insurance company operating in this state
12 and which are inspected by ~~such~~ the insurance company's boiler
13 inspector shall not be subject to inspection by the state
14 ~~department of labor~~ Division of Labor, during any twelve months'
15 period during which an inspection is made by the insurance
16 company's boiler inspector.

17 The commissioner of labor or state boiler inspector shall have
18 the authority to inspect steam boilers in this state. To carry out
19 the provisions of this section, the commissioner of labor shall
20 prescribe rules ~~and regulations~~ under which boilers may be
21 constructed and operated, according to their class. The
22 commissioner of labor shall be authorized to revoke any permit to
23 operate a steam boiler if the rules prescribed by the commissioner
24 of labor, or his or her authorized representative, are violated or

1 if a condition shall prevail which is hazardous to the life and
2 health of persons operating or employed at or around the boiler.
3 Any person or corporation who shall operate a steam boiler for
4 which a permit is necessary under the provisions of this section,
5 without first obtaining ~~such~~ a permit to operate a steam boiler,
6 shall be guilty of a misdemeanor, and, upon conviction thereof,
7 shall be fined not less than \$100 nor more than \$500. Every day a
8 steam boiler requiring a permit to operate is operated without ~~such~~
9 a permit shall be considered a separate offense.

10 The commissioner may charge ~~such~~ a fee as he or she determines
11 reasonable for the inspection of boilers by the ~~department of labor~~
12 Division of Labor boiler inspector, ~~of the commissioner's~~
13 ~~authorized boiler inspection agency,~~ for the processing of
14 inspection reports from insurance companies, for issuing annual
15 permits to operate boilers and for commissioning insurance company
16 boiler inspectors. Such fees shall be established by a rule
17 promulgated in accordance with the provisions of chapter
18 twenty-nine-a of this code. No fee shall be charged for the
19 inspection of boilers used on mobile equipment or vehicles used for
20 occasional entertainment or display purposes.

21 **§21-3-3. Meal breaks.**

22 During the course of a workday of six or more hours, all
23 employers shall make available for each of their employees, at
24 least twenty minutes for meal breaks, at times reasonably

1 designated by the employer. This provision ~~shall be~~ is required in
2 all situations where employees are not afforded necessary breaks
3 and/or permitted to eat lunch while working.

4 **§21-3-4. Power of commissioner as to witnesses; prosecution of**
5 **offenses; penalties; jurisdiction; exemption of coal**
6 **mining operations; recovery of civil penalties.**

7 The commissioner of labor or any authorized representative of
8 the ~~department~~ Division of Labor in the performance of any duty or
9 the execution of any power prescribed by law shall have the power
10 to administer oaths, certify to official acts, take and cause to be
11 taken depositions of witnesses.

12 It ~~shall be~~ is the duty of the Attorney General and the
13 several prosecuting attorneys, upon request of the commissioner of
14 labor or any of his or her authorized representatives, to prosecute
15 any violation of the law which it is made the duty of the said
16 commissioner of labor to enforce.

17 If any employer, employee, owner or other person shall violate
18 any provision of this chapter or shall fail or refuse to perform
19 any duty lawfully required within the time prescribed by the
20 commissioner of labor or his or her authorized representatives, for
21 which no penalty has been specifically provided, or shall fail,
22 neglect, or refuse to obey any lawful order given, made or
23 promulgated by the commissioner of labor or his or her authorized
24 representatives, or shall interfere with, impede, or obstruct in

1 any manner the commissioner of labor or his or her authorized
2 representatives in the performance of his or her or their official
3 duties, he or she shall be guilty of a misdemeanor and, upon
4 conviction thereof shall be fined not less than \$10 nor more than
5 \$50, or shall be imprisoned for not exceeding six months, or both
6 so fined and imprisoned, for each such offense; and each day such
7 violation, omission, failure, or refusal continues shall be deemed
8 a separate offense.

9 A ~~justice of the peace~~ magistrate shall have concurrent
10 jurisdiction with the circuit court and other courts having
11 criminal jurisdiction in his or her county for the trial of
12 offenses under this article. Those portions of all coal mining
13 properties and operations which are under the supervision of the
14 ~~Department of Mines~~ Office of Miners' Health, Safety and Training
15 are excepted from the operation of provisions of this article.

16 In lieu of the penalties heretofore provided in this section,
17 any such penalty may be recovered in a civil action in the name of
18 the State of West Virginia.

19 **§21-3-5. Records and reports of commissioner. ~~inspectors and~~**
20 **~~chief clerk.~~**

21 The Commissioner of Labor ~~inspectors and chief clerk~~ and his
22 or her authorized representatives shall make and keep full and
23 proper record of all their expenses, and of inspections and
24 statistics as to conditions, changes and improvements made for the

1 safety and welfare of employees affected by this article and the
2 Commissioner of Labor shall submit a proper report thereof to the
3 Governor, as provided in section four, article one of this chapter.

4 **§21-3-6. Employers not to require payment of fees for medical**
5 **examination as condition of employment; enforcement.**

6 (a) The term "employer," as used in this section, ~~shall mean~~
7 means and includes an individual, a partnership, an association, a
8 corporation, a legal representative, a trustee, receiver, trustee
9 in bankruptcy, and any common carrier by rail, motor, water, air or
10 express company doing business in or operating within the state.

11 (b) The term "employee" ~~shall mean~~ means and includes every
12 person who may be permitted, required or directed by any employer,
13 as defined in subsection (a), in consideration of direct or
14 indirect gain or profit, to engage in any employment.

15 © It shall be unlawful for any employer, as defined in
16 subsection (a) to require any employee or applicant for employment
17 to pay the cost of a medical examination as a condition of
18 employment.

19 (d) Any employer who violates the provisions of this section
20 shall be liable to a penalty of not more than \$100 for each and
21 every violation. It shall be the duty of the commissioner of labor
22 to enforce this section.

23 **§21-3-7. Discrimination for use of tobacco products prohibited.**

1 (a) It ~~shall be~~ is unlawful for any employer, whether public
2 or private, or the agent of such employer to refuse to hire any
3 individual or to discharge any employee or otherwise to
4 disadvantage or penalize any employee with respect to compensation,
5 terms, conditions or privileges of employment solely because ~~such~~
6 the individual uses tobacco products off the premises of the
7 employer during nonworking hours.

8 (b) This section shall not apply with respect to an employer
9 which is a nonprofit organization which, as one of its primary
10 purposes or objectives, discourages the use of one or more tobacco
11 products by the general public.

12 © This section shall not prohibit an employer from offering,
13 imposing or having in effect a health, disability or life insurance
14 policy which makes distinctions between employees for type of
15 coverage or price of coverage based upon the employee's use of
16 tobacco products: *Provided*, That any differential premium rates
17 charged to employees must reflect differential costs to the
18 employer: *Provided, however*, That the employer must provide
19 employees with a statement delineating the differential rates used
20 by its insurance carriers.

21 (d) Nothing in this section shall be construed to prohibit an
22 employer from making available to smokers and other users of
23 tobacco products, programs, free of charge or at reduced rates,
24 which encourage the reduction or cessation of smoking or tobacco

1 use.

2 **§21-3-8. Use of video and other electronic surveillance devices**
3 **by employers prohibited.**

4 (a) It is unlawful for any employer or the agent or
5 representative of an employer, whether public or private, to
6 operate any electronic surveillance device or system, including,
7 but not limited to, the use of a closed circuit television system,
8 a video-recording device, or any combination of those or other
9 electronic devices for the purpose of recording or monitoring the
10 activities of the employees in areas designed for the health or
11 personal comfort of the employees or for safeguarding of their
12 possessions, ~~such as~~ including, but not limited to rest rooms,
13 shower rooms, locker rooms, dressing rooms and employee lounges.

14 (b) Any employer or agent thereof who violates any provision
15 of this section is guilty of a misdemeanor and, if convicted, shall
16 be fined \$500 for the first offense. An employer or agent thereof
17 convicted a second time under this provision shall be fined \$1,000.
18 For the third and any subsequent offense, the penalty shall be
19 \$2,000.

20 **§21-3-9. Special Revenue Fund for the Division of Labor;**
21 **authorized deposits; disbursements; purpose.**

22 There is hereby ~~created~~ continued in the State Treasury a
23 special revenue fund to be known as the "Occupational Safety and

1 Health Fund" which shall consist of all gifts, grants, bequests,
 2 transfers, appropriations or other donations or payments which may
 3 be received by the Division of Labor from any governmental entity
 4 or unit or any person, firm, foundation, or corporation for the
 5 purposes of this section, and all interest or other return earned
 6 from investment of the fund. Expenditures from the fund shall be
 7 made by the Commissioner of the Division of Labor to provide
 8 matching funds, or to reimburse the Division of Labor for providing
 9 matching funds, to obtain federal funds for the administration of
 10 an occupational safety and health consultation program under
 11 contract with the federal Division of Labor.

NOTE: The purpose of this bill is to delete code provisions which are either obsolete or related to functions now administered by the U. S. Office of Safety and Health Administration (OSHA). The bill further provides for the redesignation of the remaining sections of the article as follows:

New Code Section	Former Code Section
§21-3-2	§21-3-7
§21-3-3	§21-3-10a
§21-3-4	§21-3-14
§21-3-5	§21-3-15
§21-3-6	§21-3-17
§21-3-7	§21-3-19
§21-3-8	§21-3-20
§21-3-9	§21-3-21

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.