

H. B. 4392

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

[Introduced February 3, 2014; referred to the
Committee on Government Organization then the Judiciary.]

A BILL 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, §21-16-10 and §21-16-11; and by adding thereto a new
article, designated §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4,
§29-3E-5, §29-3E-6, §29-3E-7, §29-3E-8 and §29-3E-9, all
relating to regulating persons who perform work on heating,
ventilating and cooling systems and fire dampers; 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 fire dampers to be licensed by the
State Fire Marshal; providing for exemptions from licensure;
authorizing the commissioner to promulgate legislative rules;
authorizing the State Fire Marshal to promulgate legislative
rules; authorizing enforcement procedures; authorizing

1 interagency agreements; authorizing the issuance, renewal,
 2 denial, suspension and revocation of licenses; providing for
 3 criminal penalties; providing that no political subdivision of
 4 the state may mandate additional licensing requirements; and
 5 providing for the disposition of fees.

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

7 That the Code of West Virginia, 1931, as amended, be amended
 8 by adding thereto a new article, designated §21-16-1, §21-16-2,
 9 §21-16-3, §21-16-4, §21-16-5, §21-16-6, §21-16-7, §21-16-8, §21-16-
 10 9, §21-16-10 and §21-16-11; and by adding thereto a new article,
 11 §29-3E-1, §29-3E-2, §29-3E-3, §29-3E-4, §29-3E-5, §29-3E-6, §29-3E-
 12 7, §29-3E-8 and §29-3E-9, all to read as follows:

13 **CHAPTER 21. LABOR**

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

15 **§21-16-1. Declaration of purpose.**

16 The provisions of this article are intended to protect the
 17 health, safety and welfare of the public as well as public and
 18 private property by assuring the competence of those who perform
 19 work on a heating, ventilating and cooling system through licensure
 20 by the Commissioner of Labor.

21 **§21-16-2. Definitions.**

22 As used in this article:

23 (a) "Perform work on a heating, ventilating and cooling

1 system" means to install, maintain, alter, remodel or repair one or
2 more components of a heating, ventilating and cooling system.

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

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

13 (2) "Ventilating system" means the natural or mechanical
14 process of supplying air to, or removing air from, any space
15 whether the air is conditioned or not conditioned, at a rate of
16 airflow of more than 250 cubic feet per minute; and

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

20 (c) "License" means a valid and current license issued by the
21 Commissioner of Labor in accordance with the provisions of this
22 article.

23 (d) "Single family dwelling" means a building which is
24 occupied as, or designed or intended for occupancy as, a single

1 residence for one or more persons.

2 **§21-16-3. License required; exemptions.**

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

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

11 (c) This article does not apply to:

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

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

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

23 **§21-16-4. Licensure requirements.**

24 (a) To be licensed as a heating, ventilation and cooling

1 technician-in-training, a person shall demonstrate an interest in
2 and aptitude for heating, ventilating and cooling work but who
3 alone is not capable of performing heating, ventilating and cooling
4 work, and who has fewer than eight thousand hours of heating,
5 ventilating and cooling work experience.

6 (b) To be licensed as a journeyman heating, ventilation and
7 cooling technician, a person shall demonstrate competency to
8 instruct and supervise the work of a heating, ventilation and
9 cooling technician-in-training, and have at least eight thousand
10 hours of heating, ventilating and cooling work experience.

11 (c) To be licensed as a master heating, ventilation and
12 cooling technician, a person shall demonstrate competency to design
13 heating, ventilating and cooling systems and to instruct and
14 supervise the work of a heating, ventilation and cooling
15 technician-in-training and a journeyman heating, ventilation and
16 cooling technician, and have at least ten thousand hours of
17 heating, ventilating and cooling work experience.

18 **§21-16-5. Scope of practice.**

19 (a) A heating, ventilation and cooling technician-in-training
20 is authorized to assist in providing heating, ventilating and
21 cooling work only under the direction and control of a journeyman
22 heating, ventilation and cooling technician or a master heating,
23 ventilation and cooling technician.

24 (b) A journeyman heating, ventilation and cooling technician

1 is authorized to provide heating, ventilating and cooling work only
2 under the direction and control of a master heating, ventilation
3 and cooling technician.

4 (c) A master heating, ventilation and cooling technician is
5 authorized to provide heating, ventilating and cooling work without
6 supervision.

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

11 **§21-16-6. Rule-making authority.**

12 The Commissioner of Labor shall propose rules for legislative
13 approval, in accordance with the provisions of article three,
14 chapter twenty-nine-a of this code, for the implementation and
15 enforcement of the provisions of this article, which shall provide:

16 (1) Standards and procedures for issuing and renewing
17 licenses, applications, examinations and qualifications;

18 (2) Reciprocity provisions;

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

21 (4) 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

1 this article.

2 **§21-16-7. Enforcement; interagency agreements authorized.**

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

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

13 **§21-16-8. Denial, suspension and revocation of license.**

14 (a) The Commissioner of Labor may deny a license to any
15 applicant who fails to comply with the provisions of this article
16 or the rules established by the Commissioner of Labor or who lacks
17 the necessary qualifications.

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

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

24 (2) The licensee subscribed or vouched for a material

1 misstatement in his or her application for licensure;

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

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

8 **§21-16-9. Penalties.**

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

14 (b) A person continuing to perform, or an employer continuing
15 to authorize a person not exempt by the provisions of section three
16 of this article, to perform, heating, ventilating and cooling work
17 after the issuance of a cease and desist order is guilty of a
18 misdemeanor and, upon conviction thereof, is subject to the
19 following penalties:

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

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

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

4 (c) A separate offense means each day, after official notice
5 is given, that a person performs or that an employer authorizes a
6 person, not exempt by the provisions of section three of this
7 article, to perform, heating, ventilating and cooling work that is
8 unlawful or is not in compliance with this article.

9 (d) (1) The Commissioner of Labor may institute proceedings in
10 the circuit court of Kanawha County or of the county where the
11 alleged violation of the provisions of this article occurred or are
12 occurring to enjoin any violation of any provision of this article.

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

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

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

21 **§21-16-10. Inapplicability of local ordinances.**

22 On and after January 1, 2016, a political subdivision of this
23 state may not require, as a condition precedent to the performance
24 of work on heating, ventilating and cooling in the political

1 subdivision, a person who holds a valid and current license issued
2 under this article, to have any other license or other evidence of
3 competence to perform work on heating, ventilating and cooling
4 systems.

5 **§21-16-11. Disposition of fees.**

6 All fees paid pursuant to this article, shall be paid to the
7 Commissioner of Labor and deposited in a special revenue account
8 with the State Treasurer for the use of the Commissioner of Labor
9 to enforce the provisions of this article.

10 **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

11 **ARTICLE 3E. REGULATION OF FIRE DAMPER WORK.**

12 **§29-3E-1. Declaration of purpose.**

13 The provisions of this article are intended to protect the
14 health, safety and welfare of the public as well as public and
15 private property by assuring the competence of those who perform
16 fire damper work through licensure by the State Fire Marshal.

17 **§29-3E-2. Definitions.**

18 As used in this article:

19 (a) "Fire damper" means a passive fire protection device used
20 in heating, venting and cooling equipment or system ducts to
21 prevent the spread of fire inside the ductwork through fire
22 resistance rated walls and floors, activated to closure by a
23 thermal element or upon receipt of an electrical signal from a fire

1 alarm system.

2 (b) "Fire damper work" means to install, test, maintain or
3 repair a fire damper.

4 (c) "License" means a valid and current license issued by the
5 State Fire Marshal in accordance with this article.

6 (d) "Single family dwelling" means a building which is
7 occupied as, or designed or intended for occupancy as, a single
8 residence for one or more persons.

9 **§29-3E-3. License required; exemptions.**

10 (a) On and after January 1, 2016, a person performing or
11 offering to perform fire damper work in this state shall have a
12 license issued by the State Fire Marshal, in accordance with this
13 article: *Provided*, That a person may not be licensed to perform
14 fire damper work in this state without first being licensed as a
15 journeyman heating, ventilation and cooling technician or a master
16 heating, ventilation and cooling technician pursuant to the
17 provisions of article sixteen, chapter twenty-one of this code.

18 (b) A person licensed under this article shall carry a copy of
19 the license on any job in which fire damper work is being
20 performed.

21 (c) This article does not apply to:

22 (1) A person who personally performs fire damper work on a
23 single family dwelling owned by that person or by a member of that
24 person's immediate family; or

1 (2) A person who performs fire damper work at any
2 manufacturing plant or other industrial establishment as an
3 employee of the person, firm or corporation operating the plant or
4 establishment.

5 **§29-3E-4. Rule-making authority.**

6 The State Fire Marshal shall propose rules for legislative
7 approval, in accordance with the provisions of article three,
8 chapter twenty-nine-a of this code, for the implementation and
9 enforcement of this article, which shall provide:

10 (1) Standards and procedures for issuing and renewing
11 licenses, applications, examinations and qualifications: *Provided,*
12 That the rules require a person to be licensed as a journeyman
13 heating, ventilation and cooling technician or a master heating,
14 ventilation and cooling technician pursuant to article sixteen,
15 chapter twenty-one of this code and the rules promulgated pursuant
16 thereto, before being granted a license to perform fire damper work
17 pursuant to this article;

18 (2) Reciprocity provisions;

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

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

23 (5) Enforcement procedures; and

24 (6) Any other rules necessary to effectuate the purposes of

1 this article.

2 **§29-3E-5. Enforcement; interagency agreements authorized.**

3 (a) The State Fire Marshal and his or her Deputy Commissioner
4 or any compliance officer as authorized by the State Fire Marshal
5 may enforce the provisions of this article, and may, at reasonable
6 hours, enter any building or premises where fire damper work is
7 performed and issue cease and desist orders for noncompliance.

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

12 **§29-3E-6. Denial, suspension and revocation of license.**

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

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

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

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

24 (3) The licensee incompetently or unsafely performs fire

1 damper work; or

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

6 **§29-3E-7. Penalties.**

7 (a) On and after January 1, 2016, a person performing or
8 offering to perform, or an employer authorizing a person not exempt
9 by the provisions of section three of this article, to perform,
10 fire damper work without a license issued by the State Fire
11 Marshal, is subject to a cease and desist order.

12 (b) A person continuing to perform, or an employer continuing
13 to authorize a person not exempt by the provisions of section three
14 of this article, to perform fire damper work after the issuance of
15 a cease and desist order is guilty of a misdemeanor and, upon
16 conviction thereof, is subject to the following penalties:

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

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

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

1 (c) A separate offense means each day, after official notice
2 is given, that a person performs, or that an employer authorizes a
3 person not exempt by the provisions of section three of this
4 article, to perform fire damper work that is unlawful or is not in
5 compliance with this article.

6 (d) (1) The State Fire Marshal may institute proceedings in the
7 circuit court of Kanawha County or of the county where the alleged
8 violation of the provisions of this article occurred or are
9 occurring to enjoin any violation of any provision of this article.

10 (2) A circuit court may by injunction compel compliance with
11 this article, with the lawful orders of the State Fire Marshal and
12 with any final decision of the State Fire Marshal.

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

15 (e) Any person adversely affected by an action of the State
16 Fire Marshal may appeal the action pursuant to chapter twenty-nine-
17 a of this code.

18 **§29-3E-8. Inapplicability of local ordinances.**

19 On and after January 1, 2016, a political subdivision of this
20 state may not require, as a condition precedent to the performance
21 of fire damper work in the political subdivision, a person who
22 holds a valid and current license issued under article twenty-nine-
23 a, to have any other license or other evidence of competence to
24 perform fire damper work.

1 **§29-3E-9. Disposition of fees.**

2 All fees paid pursuant to this article, shall be paid to the
3 State Fire Marshal and deposited in a special revenue account with
4 the State Treasurer for the use of the State Fire Marshal as
5 provided in subsection (c), section twelve-b, article three of this
6 chapter.

NOTE: The purpose of this bill is to regulate persons who perform work on heating, ventilating and cooling systems and fire dampers. It requires persons who perform work on heating, ventilating and cooling systems to be licensed by the Commissioner of Labor and persons who perform work on fire dampers to be licensed by the State Fire Marshal. The bill authorizes the Commissioner and State Fire Marshal to promulgate legislative rules. It provides enforcement procedures; authorizes interagency agreements; and the issuance, renewal, denial, suspension and revocation of licenses. The bill provides for criminal penalties. It also provides that no political subdivision of the state may mandate additional licensing requirements.

This article is new; therefore, it has been completely underscored.