

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2776**

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

[BY REQUEST OF THE EXECUTIVE]

[Originating in the Committee on Finance;

March 23, 2017]



1 A BILL to amend and reenact §21-3-7 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §21-3C-11 of the said code; to amend and reenact §21-3D-8 of said code; to  
3 amend and reenact §21-5-5c of said code; to amend and reenact §21-14-9 of said code;  
4 to amend and reenact §21-16-10 of said code; to amend and reenact §47-1-8, §47-1-20,  
5 §47-1-21 and §47-1-22 of said code; and to amend and reenact §47-1A-10 and §47-1A-  
6 14 of said code, all relating generally to the Division of Labor; establishing “Steam Boiler  
7 Fund”; establishing “HVAC Fund”; establishing “Plumbing Work Fund”; establishing  
8 “Psychophysiological Examiners Fund”; establishing “Bedding and Upholstery Fund”;  
9 requiring the commissioner to charge certain fees for steam boilers; authorizing the  
10 commissioner to promulgate legislative and emergency rules to administer and enforce  
11 fees on service persons and service agencies and businesses using weighing and  
12 measuring devices; directing civil penalty fees to the Weights and Measures Fund;  
13 removing requirement that the commissioner approve applications for sterilization permits  
14 held in states other than West Virginia only after personal inspection of such sterilizer or  
15 disinfectant; increasing maximum fees for the issuance of certificates of operation of  
16 elevators; establishing certain late fees; establishing certain reissuance fees for revoked  
17 or expired permits; increasing certain fees for sterilizers, manufacturers, shippers or  
18 sellers of bedding or upholstery, upholsters and renovators; and authorizing the  
19 commissioner to promulgate legislative rules.

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

1 That §21-3-7 of the Code of West Virginia, 1931, as amended be amended and reenacted;  
2 that §21-3C-11 of said code be amended and reenacted; that §21-3D-8 of said code be amended  
3 and reenacted; that §21-5-5c of said code be amended and reenacted; that §21-14-9 of said code  
4 be amended and reenacted; that §21-16-10 of said code be amended and reenacted; that §47-  
5 1-8, §47-1-20, §47-1-21 and §47-1-22 of said code be amended and reenacted; and that §47-1A-  
6 10 and §47-1A-14 of said code be amended and reenacted, all to read as follows:

## CHAPTER 21. LABOR.

### ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

#### §21-3-7. Regulation of operation of steam boilers.

1           (a) Any person owning or operating a steam boiler carrying more than fifteen pounds  
2 pressure per square inch (except boilers on railroad locomotives subject to inspection under  
3 federal laws, portable boilers used for agricultural purposes, boilers on automobiles, boilers of  
4 steam fire engines brought into the state for temporary use in times of emergency for the purpose  
5 of checking conflagrations, boilers used in private residences which are used solely for residential  
6 purposes, any sectional boilers, small portable boilers commonly used in the oil and gas industry  
7 about their wells and tool houses, and boilers under the jurisdiction of the United States) in this  
8 state shall first obtain a permit to operate a steam boiler from the Commissioner of Labor, or from  
9 an inspector working under his or her jurisdiction.

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

21           (c) The Commissioner of Labor or state boiler inspector shall have the authority to inspect  
22 steam boilers in this state. To carry out the provisions of this section, the Commissioner of Labor

23 shall prescribe rules and regulations under which boilers may be constructed and operated,  
24 according to their class. The Commissioner of Labor ~~shall be authorized to~~ may revoke any permit  
25 to operate a steam boiler if the rules prescribed by the Commissioner of Labor, or his or her  
26 authorized representative, are violated or if a condition shall prevail which is hazardous to the life  
27 and health of persons operating or employed at or around the boiler. Any person or corporation  
28 who shall operate a steam boiler for which a permit is necessary under the provisions of this  
29 section, without first obtaining such permit to operate a steam boiler, ~~shall be~~ is guilty of a  
30 misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500.  
31 Every day a steam boiler requiring a permit to operate is operated without ~~such~~ the permit ~~shall~~  
32 ~~be considered~~ is a separate offense.

33 (d) The commissioner may charge such fee as he determines reasonable shall charge an  
34 annual fee to be established by legislative rule for the inspection of boilers by the ~~department of~~  
35 ~~labor boiler inspector of the commissioner's authorized boiler inspection agency~~ division, for the  
36 processing of inspection reports from insurance companies, for the issuing of annual permits to  
37 operate boilers and for the commissioning of insurance company boiler inspectors. ~~Such fees~~  
38 ~~shall be established by a rule promulgated in accordance with the provisions of chapter twenty-~~  
39 ~~nine-a of this code~~ The commissioner shall propose rules for legislative approval, in accordance  
40 with article three, chapter twenty-nine-a of this code for the implementation and enforcement of  
41 this section. No fee ~~shall~~ may be charged for the inspection of boilers used on mobile equipment  
42 or vehicles used for occasional entertainment or display purposes.

43 (e) All moneys collected pursuant to this section shall be deposited in a special account in  
44 the State Treasury to be known as the "Steam Boiler Fund" to be administered by the  
45 Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this  
46 section and are not authorized from collections but are to be made only in accordance with  
47 appropriation by the Legislature and in accordance with the provisions of article three, chapter  
48 twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this

49 code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen,  
50 expenditures are authorized from collections rather than pursuant to appropriation by the  
51 Legislature.

**ARTICLE 3C. ELEVATOR SAFETY.**

**§21-3C-11. Disposition of fees; legislative rules.**

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

4 (1) Standards, qualifications and procedures for submitting applications, taking  
5 examinations, and issuing and renewing licenses, certificates of competency and certificates of  
6 operation of the three licensure classifications set forth in section ~~ten (a) ten-a~~ ten-a of this article;

7 (2) For the renewal of a license, even if the licensee is unemployed or not working in the  
8 industry: *Provided*, That to engage or offer to engage in the business of erecting, constructing,  
9 installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered  
10 by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant  
11 to the provisions of section ~~ten (a) six~~, article eleven, chapter twenty-one of the code;

12 (3) Qualifications and supervision requirements for elevator apprentices;

13 (4) Provisions for the granting of licenses without examination, to applicants who present  
14 satisfactory evidence of having the expertise required to perform work as defined in this article  
15 and who apply for licensure on or before July 1, 2010: *Provided*, That if a license issued under  
16 the authority of this subsection subsequently lapses, the applicant may, at the discretion of the  
17 commissioner, be subject to all licensure requirements, including the examination;

18 (5) Provisions for the granting of emergency licenses in the event of an emergency due to  
19 disaster, act of God or work stoppage when the number of persons in the state holding licenses  
20 issued pursuant to this article is insufficient to cope with the emergency;

21 (6) Provisions for the granting of temporary licenses in the event that there are no elevator  
22 mechanics available to engage in the work of an elevator mechanic as defined by this article;

23 (7) Continuing education requirements;

24 (8) Procedures for investigating complaints and revoking or suspending licenses,  
25 certificates of competency and certificates of operation, including appeal procedures;

26 (9) Fees for testing, issuance and renewal of licenses, certificates of competency and  
27 certificates of operation, and other costs necessary to administer the provisions of this article;

28 (10) Enforcement procedures; and

29 (11) Any other rules necessary to effectuate the purposes of this article.

30 (b) The rules proposed for promulgation pursuant to subsection (a) of this section shall  
31 establish the amount of any fee authorized pursuant to the provisions of this article: *Provided,*  
32 That in no event may the fees established for the issuance of certificates of operation exceed \$50  
33 \$90.

34 ~~(c) All fees collected pursuant to the provisions of this article shall be deposited in an~~  
35 ~~appropriated special revenue account hereby created in the State Treasury known as the~~  
36 ~~“Elevator Safety Fund” and expended for the implementation and enforcement of this article:~~  
37 ~~*Provided,* That Amounts collected which are found from time to time to exceed funds needed for~~  
38 ~~the purposes set forth in this article may be transferred to other accounts or funds and~~  
39 ~~redesignated for other purposes by appropriation of the Legislature. The “Elevator Safety Fund”~~  
40 ~~is hereby continued. All moneys collected pursuant to this article shall be deposited into the fund~~  
41 ~~to be administered by the Commissioner of Labor. Expenditures from the fund shall be for the~~  
42 ~~purposes set forth in this article and are not authorized from collections but are to be made only~~  
43 ~~in accordance with appropriation by the Legislature and in accordance with the provisions of~~  
44 ~~article three, chapter twelve of this code and upon fulfillment of the provisions of article two,~~  
45 ~~chapter eleven-b of this code.~~

46 (d) The division may enter into agreements with counties and municipalities whereby such  
47 counties and municipalities be permitted to retain the inspection fees collected to support the  
48 enforcement activities at the local level.

49 (e) The commissioner ~~and his or her deputy commissioner or any compliance officer of~~  
50 ~~the division as authorized by the commissioner~~ or his or her authorized representative may  
51 consult with engineering authorities and organizations concerned with standard safety codes,  
52 rules and regulations governing the operation, maintenance, servicing, construction, alteration,  
53 installation and the qualifications which are adequate, reasonable and necessary for the elevator  
54 mechanic and inspector.

### **ARTICLE 3D. CRANE OPERATOR CERTIFICATION ACT.**

#### **§21-3D-8. Crane operator certification fund; fees; disposition of funds.**

1 (a) ~~There is hereby established a crane operator certification fund in the State Treasurer's~~  
2 ~~office~~ All moneys from fees collected pursuant to this article shall be deposited in a special  
3 account in the State Treasury to be known as the "Crane Operator Certification Fund" to be  
4 administered by the Commissioner of Labor. Expenditures from the fund shall be for the purposes  
5 set forth in this article and are not authorized from collections but are to be made only in  
6 accordance with appropriation by the Legislature and in accordance with the provisions of article  
7 three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter  
8 eleven-b of this code.

9 (b) The commissioner may set reasonable application fees for the issuance or renewal of  
10 certificates and other services associated with crane operator certification.

11 ~~(c)(1) The commissioner shall receive and account for all money that is derived pursuant~~  
12 ~~to the provisions of this article. The commissioner shall pay all money collected into the crane~~  
13 ~~operator certification fund that has been established pursuant to subsection (a), section eight of~~  
14 ~~this article, with the exception of money received as fines. This money shall be used exclusively~~



15 ~~by the commissioner for purposes of administration and enforcement of his or her duties pursuant~~  
16 ~~to this article.~~

17 ~~(2) Expenditures from the crane operator certification fund shall be for the purposes set~~  
18 ~~forth in this article and are not authorized from collections but are to be made only in accordance~~  
19 ~~with appropriation by the Legislature in accordance with the provisions of article three, chapter~~  
20 ~~twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-~~  
21 ~~a of this code: *Provided*, That for the fiscal year ending June 30, 1999, expenditures are~~  
22 ~~authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts~~  
23 ~~collected which are found from time to time to exceed the funds needed for purposes set forth in~~  
24 ~~this article may be transferred to other accounts or funds and redesignated for other purposes by~~  
25 ~~appropriation of the Legislature~~

**ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

**§21-5-5c. License required for psychophysiological detection of deception examiners;  
qualifications; promulgation of rules governing administration of  
psychophysiological detection of deception examinations.**

1 (a) No person, firm or corporation shall administer a psychophysiological detection of  
2 deception examination, lie detector or other similar examination utilizing mechanical or electronic  
3 measures of physiological reactions to evaluate truthfulness without holding a current valid license  
4 to do so as issued by the Commissioner of Labor. No examination shall be administered by a  
5 licensed corporation except by an officer or employee thereof who is also licensed.

6 (b) A person is qualified to receive a license as an examiner if he or she:

7 (1) Is at least twenty-one years of age;

8 (2) Is a citizen of the United States;

9 (3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;

10 (4) Has not been released or discharged with other than honorable conditions from any of  
11 the armed services of the United States or that of any other nation;

12 (5) Has passed an examination conducted by the Commissioner of Labor or under his or  
13 her supervision, to determine his or her competency to obtain a license to practice as an examiner;

14 (6) Has satisfactorily completed not less than six months of internship training; and

15 (7) Has met any other qualifications of education or training established by the  
16 Commissioner of Labor in his or her sole discretion which qualifications are to be at least as  
17 stringent as those recommended by the American polygraph association.

18 (c) The Commissioner of Labor may designate and administer any test the commissioner  
19 considers appropriate to those persons applying for a license to administer psychophysiological  
20 detection of deception, lie detector or similar examination. The test shall be designed to ensure  
21 that the applicant is thoroughly familiar with the code of ethics of the American Polygraph  
22 Association and has been trained in accordance with association rules. The test must also include  
23 a rigorous examination of the applicant's knowledge of and familiarity with all aspects of operating  
24 psychophysiological detection of deception equipment and administering psychophysiological  
25 detection of deception examinations.

26 (d) The license to administer psychophysiological detection of deception, lie detector or  
27 similar examinations to any person shall be issued for a period of one year. It may be reissued  
28 from year to year. The licenses to be issued are:

29 (1) "Class I license" which authorizes an individual to administer psychophysiological  
30 detection of deception examinations for all purposes which are permissible under the provisions  
31 of this article and other applicable laws and rules.

32 (2) "Class II license" which authorizes an individual who is a full-time employee of a law-  
33 enforcement agency to administer psychophysiological detection of deception examinations to its  
34 employees or prospective employees only.

35 (e) The Commissioner of Labor shall charge ~~a fee~~ an annual fee to be established by  
36 legislative rule. ~~The fees shall be deposited in the General Revenue Fund of the state~~ All moneys  
37 collected pursuant to this section shall be deposited in a special account in the State Treasury to

38 be known as the “Psychophysiological Examiners Fund” and administered by the Commissioner  
39 of Labor. Expenditures from the fund shall be for the purposes set forth in this section and are  
40 not authorized from collections but are to be made only in accordance with appropriation by the  
41 Legislature and in accordance with the provisions of article three, chapter twelve of this code and  
42 upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided, That for*  
43 the fiscal year ending the thirtieth day of June, two thousand eighteen, expenditures are  
44 authorized from collections rather than pursuant to appropriation by the Legislature. In addition  
45 to any other information required, an application for a license shall include the applicant’s social  
46 security number.

47 (f) The Commissioner of Labor shall propose rules for legislative approval in accordance  
48 with ~~the provisions of~~ article three, chapter twenty-nine-a of this code governing the administration  
49 of psychophysiological detection of deception, lie detector or similar examination to any person:  
50 *Provided, That* all applicable rules in effect on the effective date of sections five-a, five-b, five-c  
51 and five-d of this article will remain in effect until amended, withdrawn, revoked, repealed or  
52 replaced. The legislative rules shall include:

53 (1) The type and amount of training or schooling necessary for a person before which he  
54 or she may be licensed to administer or interpret a psychophysiological detection of deception,  
55 lie detector or similar examination;

56 (2) Testing requirements including the designation of the test to be administered to  
57 persons applying for licensure;

58 (3) Standards of accuracy which shall be met by machines or other devices to be used in  
59 psychophysiological detection of deception, lie detector or similar examination;

60 (4) The conditions under which a psychophysiological detection of deception, lie detector  
61 or similar examination may be administered;

62 (5) Fees for licenses, renewals of licenses and other services provided by the  
63 commissioner;

64 (6) Any other qualifications or requirements, including continuing education, established  
65 by the commissioner for the issuance or renewal of licenses; and

66 (7) Any other purpose to carry out the requirements of sections five-a, five-b, five-c and  
67 five-d of this article.

## **ARTICLE 14. SUPERVISION OF PLUMBING WORK.**

### **§21-14-9. Disposition of fees.**

1 All fees paid pursuant to ~~the provisions of~~ this article, shall be paid to the Commissioner  
2 of Labor and deposited in a special revenue account ~~with in the State Treasurer~~ State Treasury  
3 to be known as the "Plumbing Work Fund" to be administered by for the use of the Commissioner  
4 of Labor to enforce the provisions of this article. Expenditures from the fund shall be for the  
5 purposes set forth in this article and are not authorized from collections but are to be made only  
6 in accordance with appropriation by the Legislature and in accordance with the provisions of  
7 article three, chapter twelve of this code and upon fulfillment of the provisions of article two,  
8 chapter eleven-b of this code.

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

### **§21-16-10. Disposition of fees.**

1 All fees paid pursuant to this article, shall be paid to the Commissioner of Labor and  
2 deposited in ~~"West Virginia Contractor Licensing Board Fund"~~ for the use of the Commissioner of  
3 Labor in a manner consistent with section seventeen, article eleven, chapter twenty-one of this  
4 Code a special account in the State Treasury to be known as the "HVAC Fund" to be administered  
5 by the Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in  
6 this article and are not authorized from collections but are to be made only in accordance with  
7 appropriation by the Legislature and in accordance with the provisions of article three, chapter  
8 twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this  
9 code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen,

10 expenditures are authorized from collections rather than pursuant to appropriation by the  
11 Legislature.

## CHAPTER 47. REGULATION OF TRADE.

### ARTICLE 1. WEIGHTS AND MEASURES.

#### **§47-1-8. Requirements for the registration of service persons and service agencies for commercial weighing and measuring devices.**

1 (a) The uniform regulation for the voluntary registration of service persons and service  
2 agencies for commercial weighing and measuring devices as adopted by the ~~national conference~~  
3 ~~of weights and measures~~ National Conference of Weights and Measures and published in  
4 ~~national institute of standards and technology handbook~~ National Institute of Standards and  
5 Technology Handbook 130, "Uniform Laws and Regulations" and supplements thereto or  
6 revisions thereof, shall apply to the registration of service persons and service agencies in the  
7 state, except insofar as modified or rejected by legislative rule.

8 (b) Beginning January 1, 2018, the commissioner shall charge an annual registration fee  
9 for service persons and service agencies to be established by legislative rule. The commissioner  
10 may file an emergency rule prior to January 1, 2018, to implement and administer the  
11 amendments made to this section in 2017. The commissioner may also propose rules for  
12 legislative approval, in accordance with article three, chapter twenty-nine-a of this code for the  
13 implementation and enforcement of this section.

#### **§47-1-20. State measurement laboratory and Weights and Measures Fund.**

1 The commissioner shall operate and maintain a state measurement laboratory certified  
2 and approved by the national institute of standards and technology. The laboratory shall be used  
3 to both house and maintain the state primary standards and secondary standards as traceable to  
4 the national standards and to test or calibrate any secondary or working standards which are  
5 submitted for test as required by this article.

6           The commissioner shall promulgate rules, pursuant to chapter twenty-nine-a of this code  
7 to assess fees for weights and measures laboratory calibration and testing. All fees collected by  
8 the commissioner of labor under the provisions of this ~~section~~ article shall be deposited into a  
9 special revenue account in the State Treasury to be known as the "Weights and Measures Fund"  
10 to be administered by the Commissioner of Labor. The moneys in the fund shall be used by the  
11 ~~commissioner solely for the enforcement of this article. The commissioner is hereby authorized~~  
12 ~~to allocate moneys from the weights and measures fund to enforce the provisions of this article~~  
13 ~~without legislative appropriation of moneys from the fund until June 30, 2006. Effective July 1,~~  
14 ~~2006, no moneys may be expended from the fund except by legislative appropriation.~~  
15 Expenditures from the fund shall be for the purposes set forth in this article and are not authorized  
16 from collections but are to be made only in accordance with appropriation by the Legislature and  
17 in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment  
18 of the provisions of article two, chapter eleven-b of this code: *Provided, That for the fiscal year*  
19 ending the thirtieth day of June, two thousand eighteen, expenditures are authorized from  
20 collections rather than pursuant to appropriation by the Legislature.

21           The commissioner shall provide such personnel as required to operate the laboratory in a  
22 manner which is consistent with the needs of this article. Personnel shall be trained and certified  
23 to perform all such calibrations and tests as required by the ~~national institute of standards and~~  
24 ~~technology~~ National Institute of Standards and Technology to maintain traceability of the state  
25 standards to national standards, and to properly maintain the laboratory facility as certified and  
26 traceable to the ~~national institute of standards and technology~~ National Institute of Standards and  
27 Technology.

**§47-1-21. Registration of business.**

1           (a) On or before October 1, 1994, every commercial business in the state which, in the  
2 course of conducting business, utilizes weights, measures and weighing and measuring devices  
3 covered by this article shall obtain a certificate of device registration for the commercial devices

4 covered by this article, from the division. After October 1, 1994, it shall be unlawful in the state to  
5 conduct business subject to the provisions of this article without having first obtained a certificate  
6 of device registration from the division. Application for a certificate of device registration shall be  
7 made on a form provided by the division.

8 (b) A certificate of device registration is valid for twelve months from the date of issue. The  
9 certificate of device registration shall be posted within the place of business.

10 (c) Application for the renewal of a certificate of device registration shall be made on a  
11 form provided by the division at least thirty days prior to the renewal due date. The commissioner  
12 may deny the renewal of device registration for cause where the cause is the result of the  
13 conviction of the applicant, in a court of competent jurisdiction, for a violation of this article.

14 (d) Beginning January 1, 2018, the division shall charge an annual device registration fee,  
15 to be established by legislative rule. The commissioner may file an emergency rule prior to  
16 January 1, 2018, to implement and administer the amendments made to this section in the 2017  
17 regular legislative session. The commissioner may also propose rules for legislative approval, in  
18 accordance with article three, chapter twenty-nine-a of this code for the implementation and  
19 enforcement of this section.

**§47-1-22. Civil penalties.**

1 (a) No person shall may:

2 (1) Use or have in possession for use in commerce any incorrect weight or measure;

3 (2) Sell or offer for sale for use in commerce any incorrect weight or measure;

4 (3) Remove any tag, seal or mark from any weight or measure, without specific  
5 authorization from the Weights and Measures Section; or

6 (4) Violate any provisions of this article or rules promulgated under it, not defined in  
7 subsection (a), section twenty-three of this article.

8 (b) Any person who violates subsection (a) of this section or any rule promulgated by the  
9 commissioner may be assessed a civil penalty by the commissioner, which penalty shall may not

10 be more than \$1,000 for each violation. Each violation shall constitute a separate offense. In  
11 determining the amount of the penalty, the commissioner shall consider the person's history of  
12 previous violations, the appropriateness of such penalty to the size of the business of the person  
13 charged, the gravity of the violation and the demonstrated good faith of the person charged in  
14 attempting to achieve rapid compliance after notification of a violation.

15 (c) All civil penalties paid pursuant to this section shall be paid to the Commissioner of  
16 Labor and deposited in the Weights and Measures Fund created in section twenty of this article.

17 (d) A civil penalty may be assessed by the commissioner only after the commissioner shall  
18 have has given at least ten days' notice to the person. Notice shall be in writing, shall contain a  
19 short, plain statement of the matter asserted and shall designate a time and place for a hearing  
20 where the person may show cause why the civil penalty should not be imposed. Notice of hearing  
21 shall be sent by ~~registered~~ certified mail. The person may, at the time designated for the hearing,  
22 produce evidence on his or her behalf and be represented by ~~council~~ counsel.

23 (e) Any person aggrieved by a decision of the commissioner shall have has the right to a  
24 contested case hearing under ~~the provisions of~~ article five, chapter twenty-nine-a of this code, *et*  
25 *seq.*

**ARTICLE 1A. REGULATION AND CONTROL OF BEDDING AND UPHOLSTERY  
BUSINESSES.**

**§47-1A-10. Sterilization processes; annual permits. ~~fees~~**

1 (1) Any sterilization process used in connection herewith shall be approved by the  
2 commissioner. Every person desiring to operate such sterilization process shall first obtain a  
3 numbered permit from the commissioner and shall not operate such process unless such permit  
4 is kept conspicuously posted in his or her establishment. ~~The fee for an original permit shall be~~  
5 ~~\$25~~ Application for such permit shall be accompanied by the specifications for the sterilization  
6 process to be employed by the applicant, in such form as the commissioner shall require. Such



7 permit shall expire one year from date of issue and the fee for annual renewal of the sterilization  
8 permit shall be \$10.

9 ~~(2) Every application for a sterilization permit to be held in a state other than West Virginia~~  
10 ~~shall be approved only after personal inspection of the applicant's sterilizer or disinfecter by the~~  
11 ~~commissioner or an authorized employee of the bedding division of the department. The~~  
12 ~~expenses for such inspections out of the state shall be paid by the applicant~~

13 ~~(3) (2) The commissioner may revoke or suspend any permit for violation of the provisions~~  
14 ~~of this article. Upon notification of such revocation or suspension, the person to whom the permit~~  
15 ~~was issued, or his or her successor or assignee, shall forthwith return such permit to the~~  
16 ~~commissioner. For reissuing a revoked or expired permit, the fee shall be the same as for an~~  
17 ~~original permit.~~

**§47-1A-14. Annual registration and permit fees.**

1 (a) The annual registration fee for all manufacturers shipping or selling articles of bedding  
2 and for upholsterers or renovators, as defined in this article, in the State of West Virginia shall be  
3 \$50 \$90, payable on the first day of the fiscal year. Any manufacturer, upholsterer or renovator  
4 who submits an annual registration fee on or after July 16 shall pay a \$25 late fee in addition to  
5 the annual fee.

6 (b) The annual registration sterilizer permit fee for an upholsterer or renovator of articles  
7 of bedding, as defined in this article, in the State of West Virginia shall be \$10 \$90, payable on  
8 the first day of the fiscal year. Any sterilizer who submits an annual permit fee on or after July 16  
9 shall pay a \$25 late fee in addition to the annual fee.

10 (c) The fee for reissuing a revoked or expired registration or permit shall be \$90.

11 (d) All fees collected pursuant to this article shall be deposited in a special account in the  
12 State Treasury to be known as the "Bedding and Upholstery Fund" to be administered by the  
13 Commissioner of Labor. Expenditures from the fund shall be for the purposes set forth in this  
14 article and are not authorized from collections but are to be made only in accordance with

15 appropriation by the Legislature and in accordance with the provisions of article three, chapter  
16 twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this  
17 code: *Provided*, That for the fiscal year ending the thirtieth day of June, two thousand eighteen,  
18 expenditures are authorized from collections rather than pursuant to appropriation by the  
19 Legislature.