

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 419**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced February 23, 2017; Referred  
to the Committee on Finance]

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 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 §21-9-9 of said code; to  
4 amend and reenact §21-10-4 of said code; to amend and reenact §21-11-17 of said code;  
5 to amend and reenact §21-14-9 of said code; to amend and reenact §21-15-7 of said code;  
6 to amend and reenact §21-16-10 of said code; to amend and reenact §47-1-8, §47-1-20,  
7 §47-1-21 and §47-1-22 of said code; and to amend and reenact §47-1A-10 and §47-1A-  
8 14 of said code, all relating to the creation of special revenue funding sources for the  
9 Division of Labor to meet its statutory obligations; establishing Steam Boiler Fund;  
10 establishing HVAC Fund; establishing Plumbing Work Fund; establishing  
11 Psychophysiological Examiners Fund; establishing Bedding and Upholstery Fund;  
12 removing requirement that fees from issuing licenses to administer psychophysiological  
13 detection of deception, lie detector or similar examinations be deposited in the General  
14 Revenue Fund; authorizing the commissioner to charge fees for the registration of service  
15 persons and service agencies, and the registration of businesses that use weighing and  
16 measuring devices for commercial purposes and directing such fees to the Weights and  
17 Measures Fund; authorizing the commissioner to promulgate emergency legislative rules  
18 to administer and enforce fees on service persons and service agencies and businesses  
19 using weighing and measuring devices; directing civil penalty fees to the Weights and  
20 Measures Fund; removing requirement that the commissioner approve applications for  
21 sterilization permits held in states other than West Virginia only after personal inspection  
22 of such sterilizer or disinfectant; increasing fees for the issuance of certificates of operation  
23 of elevators; establishing late fees; establishing reissuance fee for revoked or expired  
24 permits; increasing registration fees for manufacturers of bedding, upholsters and  
25 renovators; increasing permitting fees for sterilizers; authorizing the commissioner to  
26 promulgate legislative rules; and making general edits and clarifications.

*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  
2 reenacted; that §21-3C-11 of said code be amended and reenacted; that §21-3D-8 of said code  
3 be amended and reenacted; that §21-5-5c of said code be amended and reenacted; that §21-9-  
4 9 of said code be amended and reenacted; that §21-10-4 of said code be amended and  
5 reenacted; that §21-11-17 of said code be amended and reenacted; that §21-14-9 of said code  
6 be amended and reenacted; that §21-15-7 of said code be amended and reenacted; that §21-16-  
7 10 of said code be amended and reenacted; that §47-1-8, §47-1-20, §47-1-21 and §47-1-22 of  
8 said code be amended and reenacted; and that §47-1A-10 and §47-1A-14 of said code be  
9 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 of labor, during any twelve months' period during  
20 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 issuing annual permits to operate  
37 boilers and for commissioning insurance company boiler inspectors. ~~Such fees shall be~~  
38 ~~established by a rule promulgated in accordance with the provisions of chapter twenty nine a of~~

39 ~~this code~~ The commissioner shall propose rules for legislative approval, in accordance with article  
 40 three, chapter twenty-nine-a of this code for the implementation and enforcement of this section.  
 41 No fee ~~shall~~ may be charged for the inspection of boilers used on mobile equipment or vehicles  
 42 used for occasional entertainment or display purposes.

43 (e) All fees paid pursuant to this section shall be paid to the Commissioner of Labor and  
 44 deposited in an appropriated special revenue account hereby created in the State Treasury to be  
 45 known as the "Steam Boiler Fund" and expended for the implementation and enforcement of this  
 46 section. Amounts collected which are found from time to time to exceed funds needed for the  
 47 purposes set forth in this section may be utilized by the commissioner as needed to meet the  
 48 division's funding obligations.

### **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) 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), 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 (c) All fees ~~collected~~ paid pursuant to ~~the provisions of~~ this article shall be paid to the  
34 Commissioner of Labor and deposited in an appropriated special revenue account hereby created  
35 in the State Treasury known as the "Elevator Safety Fund" and expended for the implementation  
36 and enforcement of this article.  ~~: *Provided*, That~~ Amounts collected which are found from time to  
37 time to exceed funds needed for the purposes set forth in this article may be ~~transferred to other~~  
38 ~~accounts or funds and redesignated for other purposes by appropriation of the Legislature~~ utilized  
39 by the commissioner as needed to meet the division's funding obligations.

40 (d) The division may enter into agreements with counties and municipalities whereby such

41 counties and municipalities be permitted to retain the inspection fees collected to support the  
42 enforcement activities at the local level.

43 (e) ~~The commissioner and his or her deputy commissioner or any compliance officer of~~  
44 ~~the division as authorized by the commissioner~~ or his or her authorized representatives may  
45 consult with engineering authorities and organizations concerned with standard safety codes,  
46 rules and regulations governing the operation, maintenance, servicing, construction, alteration,  
47 installation and the qualifications which are adequate, reasonable and necessary for the elevator  
48 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 fees paid pursuant to this article shall be paid to the Commissioner of Labor and  
3 deposited in an appropriated special revenue account known as the "Crane Operator Certification  
4 Fund" in the State Treasury and expended for the implementation and enforcement of this article.  
5 Amounts collected which are found from time to time to exceed the funds needed for purposes  
6 set forth in this article may be utilized by the commissioner as needed to meet the division's  
7 funding obligations.

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

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

16 (2) ~~Expenditures from the crane operator certification fund shall be for the purposes set~~

17 ~~forth in this article and are not authorized from collections but are to be made only in accordance~~  
18 ~~with appropriation by the Legislature in accordance with the provisions of article three, chapter~~  
19 ~~twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-~~  
20 ~~a of this code: *Provided*, That for the fiscal year ending June 30, 1999, expenditures are~~  
21 ~~authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts~~  
22 ~~collected which are found from time to time to exceed the funds needed for purposes set forth in~~  
23 ~~this article may be transferred to other accounts or funds and redesignated for other purposes by~~  
24 ~~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 fees  
37 paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in an  
38 appropriated special revenue account hereby created in the State Treasury to be known as the  
39 "Psychophysiological Examiners Fund" and expended for the implementation and enforcement of  
40 this section. Amounts collected which are found from time to time to exceed funds needed for the

41 purposes set forth in this section may be utilized by the commissioner as needed to meet the  
42 division's funding obligations. In addition to any other information required, an application for a  
43 license shall include the applicant's social security number.

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

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

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

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

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

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

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

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

## **ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY**

**STANDARDS.****§21-9-9. License required; fees; form of license; display of license; denial, suspension or revocation.**

1 (a) No manufacturer, dealer, distributor or contractor shall engage in business in this state  
2 without first having applied for and received a license pursuant to this section. The license shall  
3 authorize the holder to engage in the business permitted by the license. All license applications  
4 shall be accompanied by the required fee and surety bond or other form of assurance or fee  
5 assessed in satisfaction of assurance as required by rule or regulation promulgated by the board.

6 (b) All licenses shall be granted or refused within thirty days after proper and complete  
7 application. All licenses shall expire on June 30 of each year, unless sooner revoked or  
8 suspended. Applications shall be deemed valid for a period of thirty days.

9 (c) The annual license fees shall be in the amounts prescribed from time to time by rules  
10 promulgated by the board but in no event less than the following amounts:

11 (1) For manufacturers, \$300;

12 (2) For dealers, \$100;

13 (3) For distributors, \$100; and

14 (4) For contractors, \$50: *Provided*, That if a contractor has met the licensing requirements  
15 of this article and the West Virginia Contractor Licensing Act in article eleven of this chapter, has  
16 paid the annual license fee under section eight, article eleven of this chapter and has furnished  
17 bond or other assurance or fee under section ten of this article, he or she shall not be required to  
18 pay the annual license fee set forth in this section.

19 (d) The board shall prescribe the form of license and each license shall have affixed  
20 thereon the seal of the state Division of Labor.

21 (e) Each licensee shall conspicuously display the license in its established place of  
22 business.

23 (f) Pursuant to such rules and regulations as may be promulgated by the board, the board

24 may deny the issuance of a license or revoke or suspend any license.

25 (g) All ~~license fees collected~~ paid pursuant to this article shall be deposited in a special in  
 26 an appropriated special revenue account in the State Treasury to be known as the "State  
 27 Manufactured Housing Administration Fund". Expenditures from the fund shall be for the  
 28 administration and enforcement, ~~of the provisions of this article and are not authorized from~~  
 29 ~~collections but are to be made only in accordance with appropriation by the Legislature and in~~  
 30 ~~accordance with the provisions of article two, chapter eleven b of this code: *Provided, That for*~~  
 31 ~~the fiscal year ending June 30, 2006 expenditures are authorized from collections rather than~~  
 32 ~~pursuant to appropriation by the Legislature. Amounts collected which are found from time to time~~  
 33 ~~to exceed funds needed for the purposes set forth in this article may be utilized by the~~  
 34 commissioner as needed to meet the division's funding obligations.

## **ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.**

### **§21-10-4. Inspection and permit fees.**

1 (a) The division shall charge inspection and permit fees. The annual permit fee is \$100 for  
 2 each ride or attraction. The annual inspection fee, if an inspection is to be done by the division, is  
 3 \$100 for each ride or attraction. The annual inspection fee, if an inspection is to be done by the  
 4 division, is due at the time of application for the annual permit. The division shall waive the  
 5 inspection fee for any ride or attraction whose owner provides proof of nonprofit business status  
 6 or for any ride or attraction whose owner provides proof that an inspection has been completed  
 7 within the last year by a certified special inspector as provided in section six of this article.

8 (b) The division may charge additional inspection fees equal to the annual inspection fee  
 9 for additional inspections required as the result of the condemnation of a device for safety  
 10 standards violations and for inspections required as a result of accidents involving serious or fatal  
 11 injury. If any owner or operator requires an inspection as the result of a violation of the permitting  
 12 requirements of section six of this article, the division shall charge the owner or operator \$75 per  
 13 hour in addition to the established inspection fee, including travel time.

14 (c) All fees ~~received~~ paid pursuant to this article shall be paid to the Commissioner of  
 15 Labor and shall be deposited in a special an appropriated special revenue account in the State  
 16 Treasury known as the "Amusement Rides and Amusement Attractions Safety Fund". The  
 17 Division ~~may use moneys from the fund for the purpose of and enforcement of the provisions of~~  
 18 this article. ~~Expenditures are not authorized from collections, but are to be made only in~~  
 19 ~~accordance with appropriation by the Legislature and in accordance with the provisions of article~~  
 20 ~~three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter~~  
 21 ~~eleven-b of this code~~ Amounts collected which are found from time to time to exceed funds  
 22 needed for the purposes set forth in this article may be utilized by the commissioner as needed  
 23 to meet the division's funding obligations.

24 (d) No inspection fee may be charged public agencies.

25 (e) The Division shall issue, and the owner, operator or both of the amusement rides and  
 26 amusement attractions shall visibly display to the public, inspection stickers denoting and  
 27 signifying that the inspection and permit fee authorized by this section has been paid or waived.

## **ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.**

### **§21-11-17. Record keeping; fees.**

1 (a) The division shall keep a record of all actions taken and account for moneys received.  
 2 All moneys fees paid pursuant to this article shall be ~~deposited in a special account in the~~ paid to  
 3 the Commissioner of Labor and deposited in an appropriated special revenue account in the State  
 4 Treasury to be known as the "West Virginia Contractor Licensing Board Fund" and Expenditures  
 5 ~~from said fund shall be~~ expended for the purposes ~~set forth in this article and are not authorized~~  
 6 ~~from collections but are to be made only in accordance with appropriation by the Legislature and~~  
 7 ~~in accordance with the provisions of article three, chapter twelve of this code and upon the~~  
 8 ~~fulfillment of the provisions set forth in article two, chapter five-a of this code: *Provided*, That for~~  
 9 ~~the fiscal year ending June 30, 1992, expenditures are authorized from collections rather than~~  
 10 ~~pursuant to an appropriation by the Legislature~~ implementation and enforcement of this article.

11 Amounts collected which are found from time to time to exceed the funds needed for purposes  
12 set forth in this article may be ~~transferred to other accounts or funds and redesignated for other~~  
13 ~~purposes by appropriation of the Legislature~~ utilized by the commissioner as needed to meet the  
14 division's funding obligations.

15 (b) The division shall maintain at ~~the~~ its principal office, open for public inspection during  
16 regular office hours, a complete indexed record of all applications, licenses issued, licenses  
17 renewed and all revocations, cancellations and suspensions of licenses. Applications shall show  
18 the date of application, name, qualifications, place of business and place of residence of each  
19 applicant; and whether the application was approved or refused.

20 (c) (1) All investigations, complaints, reports, records, proceedings and other information  
21 received by the commissioner and board and related to complaints made to the commissioner or  
22 board or investigations conducted by the commissioner or board pursuant to this article, including  
23 the identity of the complainant or respondent, shall be confidential and shall not be knowingly and  
24 improperly disclosed by any member or former member of the board, the commissioner or staff,  
25 except as follows:

26 (A) Upon a finding that probable cause exists to believe that a respondent has violated  
27 the provisions of this article, the complaint and all reports, records, nonprivileged and  
28 nondeliberative materials introduced at any probable cause hearing held pursuant to the  
29 complaint are thereafter not confidential: *Provided*, That confidentiality of such information shall  
30 remain in full force and effect until the respondent has been served with a copy of the statement  
31 of charges.

32 (B) Any subsequent hearing held in the matter for the purpose of receiving evidence or  
33 the arguments of the parties or their representatives shall be open to the public and all reports,  
34 records and nondeliberative materials introduced into evidence at such subsequent hearing, as  
35 well as the board's and commissioner's orders, are not confidential.

36 (C) The commissioner or board may release any information relating to an investigation

37 at any time if the release has been agreed to in writing by the respondent.

38 (D) The complaint as well as the identity of the complainant shall be disclosed to a person  
39 named as respondent in any such complaint filed immediately upon such respondent's request.

40 (E) Where the commissioner or board is otherwise required by the provisions of this article  
41 to disclose such information or to proceed in such a manner that disclosure is necessary and  
42 required to fulfill such requirements.

43 (2) If, in a specific case, the commissioner or board finds that there is a reasonable  
44 likelihood that the dissemination of information or opinion in connection with a pending or  
45 imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration  
46 of justice, the commissioner or board shall order that all or a portion of the information  
47 communicated to the commissioner or board to cause an investigation and all allegations of  
48 violations or misconduct contained in a complaint shall be confidential, and the person providing  
49 such information or filing a complaint shall be bound to confidentiality until further order of the  
50 board.

51 (d) If any person violates the provisions of subsection (c) of this section by knowingly and  
52 willfully disclosing any information made confidential by such section or by the commissioner or  
53 board, such person ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be  
54 fined not less than \$500 nor more than \$5,000, or ~~imprisoned in the county~~ confined in jail not  
55 more than one month, or both fined and ~~imprisoned~~ confined.

56 (e) The commissioner shall certify to the State Auditor and to the board a detailed  
57 statement of all moneys received and spent during the preceding fiscal year.

## **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" and expended for the use of the Commissioner of

4 ~~Labor to enforce the provisions~~ implementation and enforcement of this article. Amounts collected  
 5 which are found from time to time to exceed funds needed for the purposes set forth in this article  
 6 may be utilized by the commissioner as needed to meet the division's funding obligations.

## **ARTICLE 15. ZIPLINE AND CANOPY TOUR RESPONSIBILITY ACT.**

### **§21-15-7. Inspection and permit fees.**

1 (a) The division shall charge inspection and permit fees. The annual permit fee is \$100.00  
 2 for each zipline or canopy tour.

3 (1) The annual inspection fee, if an inspection is to be done by the division, is \$100.00 for  
 4 each zipline or canopy tour.

5 (2) The annual inspection fee, if an inspection is to be done by the division, is due at the  
 6 time of application for the annual permit.

7 (3) The division shall waive the inspection fee for a zipline or canopy tour whose operator  
 8 provides proof of nonprofit business status or for any zipline or canopy tour whose operator  
 9 provides proof that an inspection has been completed within the last year by a certified special  
 10 inspector as provided in section nine of this article.

11 (b) The division may charge additional inspection fees equal to the annual inspection fee  
 12 for additional inspections required as the result of the condemnation of a device for safety  
 13 standards violations and for inspections required as a result of accidents involving serious or fatal  
 14 injury. If any operator requires an inspection as the result of a violation of the permitting  
 15 requirements of section nine of this article, the division shall charge the operator \$75.00 per hour  
 16 in addition to the established inspection fee, including travel time.

17 (c) All fees ~~received~~ paid pursuant to this article shall be paid to the Commissioner of  
 18 Labor and deposited in-a an appropriated special revenue account in the State Treasury known  
 19 as the "Amusement Rides and Amusement Attractions Safety Fund", ~~The Division may use~~  
 20 ~~moneys from the fund for the purpose of~~ and expended for the implementation and enforcement  
 21 ~~of the provisions of this article. Expenditures are not authorized from collections, but are to be~~

22 ~~made only in accordance with appropriation by the Legislature and in accordance with the~~  
 23 ~~provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of~~  
 24 ~~article two, chapter eleven b of this code~~ Amounts collected which are found from time to time to  
 25 exceed funds needed for the purposes set forth in this article may be utilized by the commissioner  
 26 as needed to meet the division's funding obligations.

27 (d) No inspection fee may be charged public agencies.

**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~~ an appropriated special revenue account hereby created in the State Treasury to be known  
 5 as the "HVAC Fund" and expended for the implementation and enforcement of this article.  
 6 Amounts collected which are found from time to time to exceed funds needed for the purposes  
 7 set forth in this article may be utilized by the commissioner as needed to meet the division's  
 8 funding obligations.

**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.

14 (c) All fees paid pursuant to this section shall be paid to the Commissioner of Labor and  
15 deposited in the "Weights and Measures Fund" for use by the commissioner for the  
16 implementation and enforcement of this article. Amounts collected which are found from time to  
17 time to exceed funds needed for the purposes set forth in this article may be utilized by the  
18 commissioner as needed to meet the division's funding obligations.

**§47-1-20. State measurement laboratory.**

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 paid pursuant to this section shall be paid to the commissioner under the provisions of this section  
9 ~~shall be~~ and deposited into a ~~special~~ an appropriated special revenue account in the State  
10 Treasury to be known as the "Weights and Measures Fund" ~~The moneys in the fund shall be used~~  
11 ~~by the commissioner solely~~ and expended for the implementation and enforcement of this article.  
12 ~~The commissioner is hereby authorized to allocate moneys from the weights and measures fund~~

13 ~~to enforce the provisions of this article without legislative appropriation of moneys from the fund~~  
14 ~~until June 30, 2006. Effective July 1, 2006, no moneys may be expended from the fund except by~~  
15 ~~legislative appropriation.~~ Amounts collected which are found from time to time to exceed the funds  
16 needed for the purposes set forth in this article may be utilized by the commissioner as needed  
17 to meet the division's funding obligations.

18 The commissioner shall provide such personnel as required to operate the laboratory in a  
19 manner which is consistent with the needs of this article. Personnel shall be trained and certified  
20 to perform all such calibrations and tests as required by the ~~national institute of standards and~~  
21 ~~technology~~ National Institute of Standards and Technology to maintain traceability of the state  
22 standards to national standards, and to properly maintain the laboratory facility as certified and  
23 traceable to the ~~national institute of standards and technology~~ National Institute of Standards and  
24 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 2017. The  
 17 commissioner may also propose rules for legislative approval, in accordance with article three,  
 18 chapter twenty-nine-a of this code for the implementation and enforcement of this section.

19 (e) All fees paid pursuant to this section shall be paid to the Commissioner of Labor and  
 20 deposited in the "Weights and Measures Fund" for use by the commissioner for the  
 21 implementation and enforcement of this article. Amounts collected which are found from time to  
 22 time to exceed funds needed for the purposes set forth in this article may be utilized by the  
 23 commissioner as needed to meet the division's funding obligations.

**§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" for use by the commissioner for the  
 17 implementation and enforcement of this article. Amounts collected which are found from time to  
 18 time to exceed funds needed for the purposes set forth in this article may be utilized by the  
 19 commissioner as needed to meet the division's funding obligations.

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

26 (e) Any person aggrieved by a decision of the commissioner ~~shall have~~ has the right to a  
 27 contested case hearing under ~~the provisions of~~ article five, chapter twenty-nine-a of this code, et  
 28 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, payable on the first day of the fiscal year. Any manufacturer, upholsterer or renovator who  
4 submits an annual registration fee on or after July 16 shall pay a \$25 late fee in addition to the  
5 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 paid pursuant to this article shall be paid to the Commissioner of Labor and  
12 deposited in an appropriated special revenue account hereby created in the State Treasury to be  
13 known as the "Bedding and Upholstery Fund" and expended for the implementation and  
14 enforcement of this article. Amounts collected which are found from time to time to exceed funds  
15 needed for the purposes set forth in this article may be utilized by the commissioner as needed  
16 to meet the division's funding obligations.

NOTE: The purpose of this bill is to authorize the creation of special revenue accounts in the State Treasury for the deposit of Division of Labor fees, and to authorize the commissioner utilize excess funds in new and existing special revenue accounts to meet the division's funding obligations when necessary. This bill specifically authorizes the division to charge fees for the registration of service persons, service agencies, and businesses that use weighing and measuring devices for commercial purposes, authorizes the commissioner to promulgate an emergency legislative rule regarding such fees, and authorizes the division to deposit such fees and certain other fees in the Weights and Measures Fund. This bill authorizes the increase of permitting fees for sterilizers and the increase of registration fees for bedding manufacturers, upholsterers and renovators.

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