

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4352**

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

[Originating in the Committee on Government  
Organization; January 31, 2020.]



1 A BILL to amend and reenact §29-3B-4 and §29-3B-7 of the Code of West Virginia, 1931, as  
2 amended; to amend and reenact §29-3C-4 of said code; and to amend and reenact §29-  
3 3D-2 and §29-3D-6 of said code, all relating to licenses issued by the Fire Marshal;  
4 removing the use of post-criminal conduct in professional and occupational initial licensure  
5 or certification in decision making; creating a rational nexus requirement between prior  
6 criminal conduct and initial licensure or certification in decision making; providing criteria  
7 for the State Fire Marshal as licensing or certification authority to determine whether a  
8 criminal conviction has a rational nexus to an occupation; limiting licensure  
9 disqualification; authorizing persons to petition the State Fire Marshal as to whether a  
10 person's criminal records precludes licensure; and reducing the number of necessary  
11 hours as a qualification for licensure as a journeyman sprinkler fitter or sprinkler fitter in  
12 training.

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

**ARTICLE 3B. SUPERVISION OF ELECTRICIANS.**

**§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal; reciprocity.**

1 (a) The following classes of license may be issued by the State Fire Marshal: "Master  
2 electrician license," "journeyman electrician license," "apprentice electrician license" and  
3 "temporary electrician license." Additional classes of specialty electrician license may be issued  
4 by the State Fire Marshal.

5 (b) The State Fire Marshal shall issue the appropriate class of license upon a finding that  
6 the applicant possesses the qualifications for the class of license to be issued. When considering  
7 whether an applicant possess the qualifications for the class of license, the State Fire Marshal  
8 shall consider whether an applicant's prior criminal convictions bear a rational nexus on the  
9 license being sought.

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

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

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

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

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

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

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

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

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

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

36 (c) The State Fire Marshal shall propose rules for legislative approval regarding  
37 qualifications for testing, issuance of licenses, and renewal in accordance with the provisions of  
38 §29A-3-1 *et seq.*, of this code.

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

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

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

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

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

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

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

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

11 ~~(4) The licensee violated any statute of the State of West Virginia, any rule lawfully~~  
12 ~~promulgated by an agency of the State of West Virginia or any ordinance of any municipality or~~

13 ~~county of the State of West Virginia which protects the consumer or public against unfair, unsafe,~~  
14 ~~unlawful or improper business practices; or~~

15 ~~(5)(4)~~ The licensee fails to comply with any rule of the State Fire Marshal promulgated to  
16 fulfill his or her responsibilities under this article.

17 (c) Any person aggrieved by an order or decision of the State Fire Marshal under this  
18 article is entitled to judicial review as provided by section eighteen, article three of this chapter  
19 and by chapter twenty-nine-a of this code.

### **ARTICLE 3C. CERTIFICATION OF ELECTRICAL INSPECTORS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.**

#### **§29-3D-2. Definitions.**

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

2 ~~(a)~~ "Combination Fire/Smoke Damper" means a device that meets both fire damper and  
3 smoke damper requirements.

4           ~~(b)~~ “Damper” means a fire damper, smoke damper or combination fire/smoke damper.

5           ~~(c)~~ “Damper work” means to install, test, maintain or repair a damper.

6           ~~(d)~~ “Engineered Suppression Systems Installer” means a person certified by a  
7 manufacturer to install, alter, extend, maintain, layout or repair an agent suppression system.

8           ~~(e)~~ “Engineered Suppression Systems Technician” means a person certified by a  
9 manufacturer to maintain or repair an agent suppression system.

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

14           ~~(g)~~ “Fire protection damper technician” means a person certified to install, test, maintain  
15 or repair a damper.

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

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

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

28           ~~(k)~~ “Fire protection work” means the installation, alteration, extension, maintenance, or  
29 testing of all piping, materials and equipment inside a building, including the use of shop drawings

30 prepared by a fire protection layout technician, in connection with the discharge of water, other  
31 special fluids, chemicals or gases and backflow preventers for fire protection for the express  
32 purpose of extinguishing or controlling fire.

33 (f) "Journeyman sprinkler fitter" means a person qualified by at least ~~ten thousand~~ 5,000  
34 hours of work experience installing, adjusting, repairing and dismantling fire protection systems  
35 and who is competent to instruct and supervise the fire protection work of a sprinkler fitter in  
36 training.

37 (m) "License" means a valid and current license issued by the State Fire Marshal in  
38 accordance with the provisions of this article.

39 (n) "Portable Fire Extinguisher Technician" means a person certified in accordance with  
40 NFPA 10 to install, maintain, repair and certify portable fire extinguishers as defined by NFPA 10.

41 (o) "Preengineered Suppression Systems Installer" means a person certified by a  
42 manufacturer to install, alter, extend, maintain, layout or repair an agent suppression system.

43 (p) "Preengineered Suppression Systems Technician" means a person certified to  
44 maintain or repair an agent suppression system.

45 (q) "Single family dwelling" means a building which is occupied as, or designed or intended  
46 for occupancy as, a single residence for one or more persons.

47 (r) "Smoke Damper" means a device within an operating (dynamic) air distribution system  
48 to control the movement of smoke.

49 (s) "Sprinkler fitter in training" means a person with interest in and an aptitude for  
50 performing fire protection work but who alone is not capable of performing such work, and who  
51 has fewer than ~~ten thousand~~ 5,000 hours of experience installing, adjusting, repairing and  
52 dismantling fire protection systems.

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

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

3 considering whether an applicant possess the qualifications for a license, the State Fire Marshal  
4 shall consider whether an applicant's prior criminal convictions bear a rational nexus on the  
5 license being sought.

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

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

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

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

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

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

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

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

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

26 (3) An individual with a criminal record who has not previously applied for licensure may  
27 petition the State Fire Marshal at any time for a determination of whether the individual's criminal  
28 record will disqualify the individual from obtaining a license. This petition shall include sufficient

29 details about the individual's criminal record to enable the State Fire Marshal to identify the  
30 jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of  
31 the conviction.

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

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

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

38 (3) The licensee incompetently or unsafely performs plumbing, fire protection work or  
39 damper work; ~~or~~

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

NOTE: The purpose of this bill is to remove barriers to employment for individuals with criminal records who seek licensure or certification in an occupation governed by state laws, with certain exceptions and to reduce the number of hours of necessary experience to qualify for certain licenses.

This bill is recommended by the Joint Committee on Volunteer Fire Departments and Emergency Medical Services for introduction and passage during the 2020 Regular Session.

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