

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2008**

BY DELEGATES FOSTER, HORST, HAMRICK, HOWELL,  
ESPINOSA, STEELE, HOLSTEIN, CLARK, KEATON, AND  
BURKHAMMER

[Introduced February 10, 2021; Referred to the  
Committee on Government Organization]

1 A BILL to repeal §21-3D-4, §21-3D-5, §21-3D-6, §21-3D-7, and §21-3D-9 of the Code of West  
2 Virginia, 1931, as amended; to amend and reenact §21-3C-10a of said code; to amend  
3 said code by adding thereto a new section, designated §21-3C-14; to amend and reenact  
4 §21-3D-1, §21-3D-2, §21-3D-3, and §21-3D-8 of said code; to amend and reenact §21-  
5 14-2 and §21-14-7 of said code; to amend and reenact §21-16-2, §21-16-3, §21-16-5, and  
6 §21-16-8 of said code; to amend said code by adding thereto a new section, designated  
7 §21-16-11; to amend and reenact §29-3B-2, §29-3B-3, §29-3B-4, §29-3B-6, and §29-3B-  
8 8 of said code; and to amend and reenact §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-6, and  
9 §29-3D-7 of said code, all relating to licensure in this state; providing for national  
10 certification programs to qualify persons working as elevator mechanics; providing for  
11 national certification programs to qualify persons working as accessibility technicians;  
12 providing for persons working as elevator mechanics or accessibility technicians provide  
13 his or her certification to the commissioner to perform work; providing for ~~providing for~~  
14 state code precedence over local ordinances; providing for a national standard and  
15 national certification for crane operators; providing for legislative appropriation of the  
16 Crane Operators Certification Fund on a certain date; providing for altered definitions of a  
17 Journeyman and Master plumber; providing for monetary penalties for improperly  
18 performing plumbing work under certain conditions; providing for altered definitions of  
19 HVAC Technician; providing that an applicant for a HVAC technician license must only  
20 provide documentation of up to 2,000 hour work, training, and experience; providing for  
21 monetary penalties for improperly performing HVAC work under certain conditions;  
22 providing for veterans who meet certain conditions be permitted to take the HVAC  
23 technician licensing exam; providing for altered definitions of Journeyman and Master  
24 electricians; providing for exemptions for licensure under certain conditions; providing for  
25 extended time frames for electricians to renew a license without retesting; providing for  
26 monetary penalties for improperly performing electrical work under certain conditions;

27 providing for definitions of fire protection workers; providing for an altered definition of  
 28 Journeyman sprinkler fitter; providing for an exemption from licensure when meeting  
 29 certain conditions; providing for monetary penalties for improperly performing fire  
 30 protection work or damper work; and providing for other minor technical changes.

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

## CHAPTER 21. LABOR.

### ARTICLE 3C. ELEVATOR SAFETY.

**§21-3C-10a. ~~License requirements for elevator~~ Elevator mechanics, accessibility technicians, ~~limited technicians; contractors license requirements; supervision of elevator apprentices requirements.~~**

1 (a) A person may not engage or offer to engage in the business of erecting, constructing,  
 2 installing, altering, servicing, repairing or maintaining elevators or related conveyances covered  
 3 by this article in this state, unless he or she has a ~~license issued~~ National Association of Elevator  
 4 Contractors Certified Accessibility and Private Residence Lift Technician (CAT) or Certified  
 5 Elevator Technician (CET) certification, or equivalent certification as selected by the  
 6 commissioner ~~in accordance with this article.~~

7 (b) A person ~~licensed under this~~ certified according to this article shall:

8 (1) Have in his or her possession a copy of the ~~license issued pursuant~~ certification issued  
 9 according to this article on any job on which he or she is performing elevator mechanic work; and

10 (2) Be, or be employed by, a contractor licensed pursuant to the provisions of §21-11-1 *et*  
 11 *seq.*, of this code unless the work is performed by a historic resort hotel's regular employees, for  
 12 which the employees are paid regular wages and not a contract price, on property owned or  
 13 leased by the historic resort hotel which is not intended for speculative sale or lease;

14 (c) *Elevator mechanic license.* --

15 (1) To ~~obtain~~ perform work as an elevator mechanic's ~~license~~, a person shall:

16           (A) ~~Successfully complete educational programs that are registered with the Bureau of~~  
17 ~~Apprenticeship and Training of the United States Department of Labor, including all required~~  
18 ~~examinations and work experience: *Provided*, That if an applicant successfully completes such~~  
19 ~~educational program prior to being registered with the Bureau of Apprenticeship and Training of~~  
20 ~~the United States Department of Labor, the division may grant a license to the applicant after he~~  
21 ~~or she demonstrates to the commissioner that he or she has successfully completed all the test~~  
22 ~~and work experience requirements; or Provide to the commissioner acceptable documentation of~~  
23 ~~CET certification or other equivalent certification listed in subsection (a) of this section; or~~

24           (B) (i) ~~Provide~~ On or before January 1, 2022, provide to the commissioner an acceptable  
25 combination of documented experience and educational credits of not less than four years of  
26 recent and active experience in the elevator industry in construction, maintenance, or  
27 service/repair or any combination thereof, as verified by current and previous employers ~~listed to~~  
28 ~~do business in this state, on a sworn affidavit; and~~

29           (ii) ~~Obtain a score of 70% or better on a written competency examination approved or~~  
30 ~~provided by the division.~~

31           (2) A licensed certified elevator mechanic may work on all elevators covered by this article.

32           (d) *Accessibility technician license.* --

33           (1) To ~~obtain~~ perform work as an accessibility technician's license a person shall provide  
34 to the commissioner a certificate of completion or identification of an accessibility training program  
35 for the elevator industry such as the CAT program by the National Association of Elevator  
36 Contractors, or an equivalent nationally recognized training program; or:

37           (A) ~~Provide to the commissioner a certificate of completion of an accessibility training~~  
38 ~~program for the elevator industry such as the Certified Accessibility Training (CAT) program by~~  
39 ~~the National Association of Elevator Contractors, or an equivalent nationally recognized training~~  
40 ~~program; or~~

41           (B) (i) ~~Have at least eighteen months experience in the construction, maintenance, service~~  
42 ~~and repair, or any combination thereof, as verified by current and previous employers, licensed~~

43 ~~to do business in this state, on a sworn affidavit, of accessibility lifts;~~

44 ~~(ii) Have at least one year of documented vocational training and/or an associate degree~~  
45 ~~in a related field; and~~

46 ~~(iii) Obtain a score of 70% or better on a written competency examination approved or~~  
47 ~~provided by the commissioner.~~

48 (2) A person holding ~~an accessibility technician license~~ a CAT certification may only  
49 perform work on accessibility equipment.

50 (3) A person holding ~~an accessibility technician license~~ a CAT certification may obtain a  
51 limited use/limited application (LULA) elevator endorsement. To obtain the LULA elevator  
52 endorsement, such person shall:

53 (A) ~~(i) Hold a current accessibility technician license~~ CAT certification; and

54 ~~(ii) (B) Provide the commissioner with a certificate of LULA manufacturer's training; and~~

55 ~~(iii) Provide at least one year of documented work experience to the commissioner, on a~~  
56 ~~sworn affidavit, in the construction, maintenance, service and repair of LULA elevators and~~  
57 ~~comparable equipment, which was completed under the supervision of a licensed accessibility~~  
58 ~~technician; or~~

59 ~~(B) As of July 1, 2012, have at least eighteen months of accessibility technician's~~  
60 ~~experience in construction, maintenance, service and repair, or any combination thereof, as~~  
61 ~~verified by current and previous employers, licensed to do business in this state, on a sworn~~  
62 ~~affidavit: *Provided*, That an additional one year of documented work as an accessibility technician~~  
63 ~~with certification of manufacturer's factory training, is required before a LULA endorsement may~~  
64 ~~be obtained.~~

65 (4) Any person carrying an accessibility license as of July 1, 2012, shall receive the  
66 required endorsement to continue to work on this type of equipment, and will be qualified to  
67 supervise future applicants as described in this section.

68 (e) *Limited technician license.* --

69 (1) To obtain a limited technician's license an applicant shall:

70 (A) Complete a certified apprenticeship program, registered by the United States  
71 Department of Labor established at a historic resort hotel, qualifying for a limited technician  
72 license; or

73 (B) Provide an acceptable combination of documented experience, and educational  
74 credits of not less than three years of recent and active experience in the elevator industry, in  
75 maintenance, or service/repair or any combination thereof, as verified by current and previous  
76 employers authorized to do business in this state, on a sworn affidavit; and obtain a score of 70  
77 percent or better on a written competency examination approved or provided by the division.

78 (2) A person holding a limited technician license may only perform work at a historic resort  
79 hotel: *Provided*, That for purposes of this section, "historic resort hotel" has the same meaning  
80 ascribed to it in §29-25-2 of this code.

81 ~~(f) Elevator apprentice.--~~

82 ~~(1) An elevator apprentice who is enrolled in an apprenticeship program approved by the~~  
83 ~~commissioner, and who is in good standing in the program, may work under the supervision of a~~  
84 ~~licensed elevator mechanic, as follows:~~

85 ~~(A) An apprentice who has not successfully completed the equivalent of at least one year~~  
86 ~~of the program may work only under the direct supervision of a licensed elevator mechanic who~~  
87 ~~is present on the premises and available to the apprentice at all times.~~

88 ~~(B) An apprentice who has successfully completed the equivalent of at least one year of~~  
89 ~~the program may:~~

90 ~~(i) Work under the direct supervision of a licensed elevator mechanic as set forth in~~  
91 ~~subdivision (1) of this subsection; and~~

92 ~~(ii) Perform the tasks set forth in this paragraph, only if delegated by and performed under~~  
93 ~~the general supervision of a licensed elevator mechanic, who must, at a minimum, meet the~~  
94 ~~apprentice on the job at the beginning of each day to delegate the specific tasks, and who remains~~  
95 ~~responsible for the delegated tasks:~~

96 ~~(l) Oiling, cleaning, greasing and painting;~~

- 97 ~~(II) Replacing of combplate teeth;~~
- 98 ~~(III) Relamping and fixture maintenance;~~
- 99 ~~(iv) Inspection, cleaning and lubricating of hoistway doors, car tops, bottoms and pits; and~~
- 100 ~~(IV) Observing operation of equipment.~~

**§21-3C-14. Inapplicability of local ordinances.**

1 On January 1, 2022, and thereafter, a political subdivision of this state may not require,  
 2 as a condition precedent to the performance of erecting, constructing, installing, altering,  
 3 servicing, repairing, or maintaining elevators or related conveyances covered by this article in the  
 4 political subdivision, a person who holds a valid license to perform such work issued under the  
 5 provisions of this article, to have any other license or other evidence of competence to engage in  
 6 the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining  
 7 elevators or related conveyance covered by this article.

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

**§21-3D-1. Definitions.**

1 For purposes of this article:

2 (a) "Commissioner" means the Commissioner of the Division of Labor, or his or her  
3 authorized representative.

4 (b) "Crane" means a power-operated hoisting machine used in construction, demolition or  
5 excavation work, which has a power-operated winch and load line and a power-operated boom  
6 that moves laterally by the rotation of the machine on a carrier, and which has a manufacturer's  
7 rated lifting capacity of more than two thousand pounds. "Crane" does not mean a forklift, digger  
8 derrick truck, bucket truck or any vehicle, aircraft or helicopter, or equipment which does not have  
9 a power-operated winch and load line.

10 ~~(c) "Emergency basis" means an occurrence of an event, circumstance or situation that~~  
11 ~~presents an imminent threat to persons or property and constitutes a serious health or safety~~  
12 ~~hazard.~~

13 ~~(d) "Employer" means any person, firm, corporation or other entity who hires or permits~~  
14 ~~any individual to work.~~

15 ~~(e) "Employee" means any individual employed by an employer and also as defined by~~  
16 ~~the commissioner.~~

17 ~~(f)(c) "Tower crane" means a crane in which a boom, swinging jib, or other structural~~  
18 ~~member is mounted on a vertical mast or tower.~~

19 ~~(g) "Training or training course" means a course approved by the commissioner which~~  
20 ~~includes some form of testing throughout, or a final written examination or practical test, or both,~~  
21 ~~which ensures, or tends to ensure that learning has occurred and that the objectives of the training~~  
22 ~~have been realized. The commissioner will evaluate whether the approved training adequately~~  
23 ~~demonstrates competency to safely operate cranes.~~

**§21-3D-2. Certification required; exemptions.**

1 ~~(a) A person may not operate a crane or tower crane without certification issued according~~  
2 ~~to OSHA regulation 29 CFR §1926.1427 Subpart CC and any amendments that may be made~~  
3 ~~from time to time. Any certifications that may expire during the year starting January 1, 2021 shall~~  
4 ~~not expire until January 1, 2022.~~ ~~under this article except for those persons exempted under~~  
5 ~~subsection (b) of this section.~~

6 ~~(b) A person is not required to obtain certification under this article if the person:~~

7 ~~(1) Is a member of the Department of Defense or Armed Forces of the United States or~~  
8 ~~an employee of the United States, when such member or employee is engaged in the work of a~~  
9 ~~crane operator exclusively for such governmental unit; or~~

10 ~~(2) Is primarily an operator of farm machinery who is performing the work of a crane~~  
11 ~~operator as part of an agricultural operation; or~~

12 ~~(3) Is operating a crane on an emergency basis; or~~

13 ~~(4) Is operating a crane for personal use and not for profit on the site of real property which~~  
14 ~~the person owns or leases; or~~



15 ~~(5) Is an Operator in Training under the direct supervision of a certified crane operator~~  
16 ~~and:~~

17 ~~(A) Who is enrolled in an industry recognized in-house training course based on the~~  
18 ~~American National Standards Institute Standards for Crane Operators and who is employed by~~  
19 ~~the entity that either taught the training course or contracted to have the training course taught,~~  
20 ~~all of which is approved by the commissioner; or~~

21 ~~(B) Who is enrolled in an apprenticeship program or training program for crane operators~~  
22 ~~approved by the United States Department of Labor, Bureau of Apprenticeship and Training;~~

23 ~~(6) Is an employee of and operating a crane at the direction of any manufacturing plant or~~  
24 ~~other industrial establishment, including any mill, factory, tannery, paper or pulp mill, mine,~~  
25 ~~colliery, breaker or mineral processing operation, quarry, refinery or well or is an employee of and~~  
26 ~~operating a crane at the direction of the person, firm or corporation who owns or is operating such~~  
27 ~~plant or establishment;~~

28 ~~(7) Is an employee of a public utility operating a crane to perform work in connection with~~  
29 ~~facilities used to provide a public service under the jurisdiction of the Public Service Commission,~~  
30 ~~Federal Energy Regulatory Commission or Federal Communications Commission; or~~

31 ~~(8) Is operating timbering harvesting machinery associated with the production of timber~~  
32 ~~and the manufacturing of wood products.~~

**§21-3D-3. Powers and duties of commissioner. Inapplicability of local ordinances.**

1 On January 1, 2022, and thereafter, a political subdivision of this state may not require,  
2 as a condition precedent to the operation of a crane or tower crane in the political subdivision, a  
3 person who is certified according to OSHA regulation 29 CFR §1926.1427 Subpart CC, to have  
4 any other license or other evidence of competence as a crane operator.

5 ~~(a) The commissioner shall:~~

6 ~~(1) Propose rules for legislative approval in accordance with the provisions of article three,~~  
7 ~~chapter twenty-nine-a of this code, which rules at the minimum must include provisions for:~~

8 ~~(A) A Class A certification program for individuals who operate cranes or tower cranes in~~  
9 ~~the State of West Virginia, which must require both a written examination and a practical~~  
10 ~~demonstration, and which must be accredited by the American National Standards Institute's~~  
11 ~~Personnel Certification Accreditation Program;~~

12 ~~(B) A Class B certification program for individuals who operate cranes or tower cranes in~~  
13 ~~the State of West Virginia, which must require the successful completion of a training course;~~

14 ~~(C) Certification categories including lattice boom truck cranes; lattice boom crawler~~  
15 ~~cranes; fixed cab telescoping boom cranes; swing cab telescoping boom cranes; and tower~~  
16 ~~cranes: *Provided*, That the holders of a certification for the large telescoping boom crane, upon~~  
17 ~~application for recertification, will be provided with a one time election to either be certified as an~~  
18 ~~operator of a fixed cab or swing cab telescoping boom crane, and that holders of a certification~~  
19 ~~for the small telescoping boom crane, upon application for recertification, will be automatically~~  
20 ~~certified as a fixed cab operator;~~

21 ~~(D) Class A certification renewal requirements of individuals who operate cranes in the~~  
22 ~~State of West Virginia, that must include a written examination and a current physician's certificate~~  
23 ~~at least every five years; and~~

24 ~~(E) Class B certification renewal requirements of individuals who operate cranes in the~~  
25 ~~State of West Virginia, that must include the successful completion of a training course approved~~  
26 ~~by the commissioner;~~

27 ~~(2) Prescribe application forms for original and renewal certification;~~

28 ~~(3) Set application fees in amounts that are reasonable and necessary to defray the costs~~  
29 ~~of the administration of this article in an amount not to exceed \$75 per year;~~

30 ~~(4) Set examination and training course fees in an amount not to exceed the actual cost~~  
31 ~~of the examination and the training course;~~

32 ~~(5) Administer or cause to be administered the written examination, practical~~  
33 ~~demonstrations and the training course as required for certification;~~

34 ~~(6) Determine the standards for acceptable performance on the written examination,~~  
 35 ~~practical demonstration and the required training course: *Provided*, That the minimum standards~~  
 36 ~~must be consistent with national standards, current operating procedures and technology and be~~  
 37 ~~transferable to other states where possible;~~

38 ~~(7) Provide the option for applicants and crane operators to take examinations that meet~~  
 39 ~~or exceed requirements for national crane operator certification; and~~

40 ~~(8) Take other action as necessary to enforce this article.~~

41 ~~(b) The commissioner, or his or her designee, upon receipt of information that a person~~  
 42 ~~has engaged in or is engaging in an act that constitutes a violation of this article, may issue a~~  
 43 ~~notice to the person to cease and desist and may apply to the circuit court for an order enjoining~~  
 44 ~~the act. Upon a showing that the person has engaged in or is engaging in an act that constitutes~~  
 45 ~~a violation of this article, the court may order an injunction, restraining order or other order as the~~  
 46 ~~court considers appropriate.~~

**§21-3D-4. Minimum certification requirements.**

1 [Repealed.]

**§21-3D-5. Denial, suspension, revocation, or reinstatement of certification.**

1 [Repealed.]

**§21-3D-6. Effect of accident.**

1 [Repealed.]

**§21-3D-7. Penalties.**

1 [Repealed.]

**§21-3D-8. Crane Operator Certification Fund; fees; disposition of funds.**

1 (a) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and  
 2 deposited in an appropriated special revenue account known as the Crane Operator Certification  
 3 Fund in the State Treasury and expended for the implementation and enforcement of this article.  
 4 Through June 30, 2019, amounts collected which are found from time to time to exceed the funds

5 needed for purposes set forth in this article may be utilized by the commissioner as needed to  
 6 meet the division's funding obligations: Provided, That beginning July 1, 2019, amounts collected  
 7 may not be utilized by the commissioner as needed to meet the division's 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.~~ All funds remaining in  
 10 the Crane Operating Certification Fund on January 1, 2022 shall be appropriated by the  
 11 Legislature.

### **§21-3D-9. Reciprocity.**

1 [Repealed.]

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

### **§21-14-2. Definitions.**

1 As used in this article:

2 (a) "License" means a valid and current license issued by the Commissioner of Labor in  
 3 accordance with the provisions of this article.

4 (b) "Journeyman plumber" means a person qualified by passage of a Journeyman plumber  
 5 written examination with a score of at least 70 percent ~~at least eight thousand hours of plumbing~~  
 6 ~~or related experience~~ and who is competent to instruct and supervise the work of a plumber in  
 7 training.

8 (c) "Master plumber" means a person who has passed a Master plumber written  
 9 examination with a score of at least 70 percent ~~with at least twelve thousand hours of plumbing~~  
 10 ~~work experience~~ and who is competent to design plumbing systems, and to instruct and supervise  
 11 the plumbing work of journeyman plumbers, and plumbers in training: Provided, That the Master  
 12 plumber written examination may not be taken until one year after passage of the Journeyman  
 13 plumber examination.

14 (d) ~~"Plumber in training" means a person with interest in and an aptitude for performing~~  
 15 ~~plumbing work but who alone is not capable of performing plumbing work, and who has fewer~~

16 ~~than eight thousand hours of plumbing experience.~~

17 ~~(e)~~(d) "Plumbing" means the practice, materials and fixtures utilized within a building in the  
 18 installation, extension and alteration of all piping, fixtures, water treatment devices, plumbing  
 19 appliances and appurtenances, in connection with sanitary drainage or storm drainage facilities;  
 20 the plumbing venting systems; medical gas systems; fuel oil and gas piping for residential,  
 21 commercial and institutional facilities; backflow preventers; and public or private water supply  
 22 systems, as defined by the state building code.

23 ~~(f)~~(e) "Single family dwelling" means a building which is occupied as, or designed or  
 24 intended for occupancy as, a single residence for one or more persons.

#### **§21-14-7. Penalties.**

1 (a) On and after January 1, 2009, a person performing or offering to perform plumbing  
 2 work without a license issued by the Commissioner of Labor, is subject to a cease and desist  
 3 order.

4 (b) Any person continuing to engage in plumbing work after the issuance of a cease and  
 5 desist order is ~~guilty of a misdemeanor and, upon conviction thereof,~~ is subject to the following  
 6 penalties:

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

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

10 (3) For the third and subsequent offenses, a fine of not less than \$1,000 nor more than  
 11 \$5,000, and ~~confinement in jail for not less than thirty days nor more than one year~~ is guilty of a  
 12 misdemeanor.

13 (c) A separate offense means each day, after official notice is given, that a person  
 14 performs plumbing work that is unlawful or is not in compliance with the provisions of this article.

15 (d) The Commissioner of Labor may institute proceedings in the circuit court of the county  
 16 where the alleged violation of the provisions of this article occurred or are occurring to enjoin any

17 violation of any provision of this article. A circuit court by injunction may compel compliance with  
18 the provisions of this article, with the lawful orders of the Commissioner of Labor and with any  
19 final decision of the Commissioner of Labor. The Commissioner of Labor shall be represented in  
20 all such proceedings by the Attorney General or his or her assistants.

21 (e) Any person adversely affected by an action of the Commissioner of Labor may appeal  
22 the action pursuant to the provisions of chapter 29A of this code.

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

### **§21-16-2. Definitions.**

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

2 (a) "Perform work on a heating, ventilating, and cooling system" means to install, maintain,  
3 alter, remodel, or repair one or more components of a heating, ventilating, and cooling system.

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

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

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

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

16 (c) "HVAC Technician" means a person with 2,000 or more hours of HVAC-related work,  
17 training, and experience and is licensed to install, test, maintain, and repair both residential and  
18 nonresidential heating, ventilating and cooling systems.

19 (d) "HVAC Residential Technician" means a person licensed to install, test, maintain, and  
20 repair residential heating, ventilating, and cooling systems: *Provided*, That such persons may  
21 perform work on nonresidential heating, ventilating, and cooling systems subject to rules  
22 promulgated by the commissioner pursuant to §21-16-3 of this code.

23 (e) "Residential heating, ventilating, and cooling system" means a system of no more than  
24 four separate heating, ventilating, and cooling units each with a combined capacity of five tons –  
25 130,000 BTUs for: (1) A single or dual family structure; or (2) a commercial location of no more  
26 than 5,000 square feet in size where no fire damper is required. Such term shall not apply to  
27 heating, ventilating, and cooling systems that include any packaged rooftop units.

28 (f) "HVAC technician in training" means a person with interest in and an aptitude for  
29 performing installation, maintenance, and repair work to a heating, ventilating, and cooling system  
30 as defined in this article, but who alone is not capable or authorized to perform heating, ventilating,  
31 and cooling system work unless directly supervised by a HVAC technician or an HVAC residential  
32 technician.

33 (g) "HVAC residential technician license" means a valid and current license issued by the  
34 Commissioner of Labor in accordance with the provisions of this article to perform work as an  
35 HVAC residential technician.

36 (h) "HVAC technician license" means a valid and current license issued by the  
37 Commissioner of Labor in accordance with the provisions of this article to perform work as an  
38 HVAC technician.

39 (i) "Routine maintenance" means work performed on a routine schedule that includes  
40 cleaning and/or replacing filters, greasing or lubricating motor bearings, adjusting and/or replacing  
41 belts, checking system temperature, checking gas temperature, adjusting gas pressure as  
42 required, and checking voltage and amperage draw on heating, ventilating, and cooling systems.

43 (j) "Single family dwelling" means a building that is occupied as, or designed or intended  
44 for occupancy as, a single residence for one or more persons.

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

1           (a) On and after January 1, 2016, a person performing or offering to perform work on a  
2 heating, ventilating, and cooling system in this state shall have a license issued by the  
3 Commissioner of Labor, in accordance with the provisions of this article and the legislative rules  
4 promulgated pursuant hereto: *Provided*, That the commissioner shall issue HVAC residential  
5 technician licenses to qualified applicants without examination who present satisfactory evidence  
6 no later than December 31, 2019, of having at least 2,000 hours of experience and/or training  
7 working on heating, ventilating, and cooling systems: *Provided, however*, That if a license issued  
8 under the authority of this subsection subsequently lapses, the applicant is subject to all licensure  
9 requirements, including the examination.

10           (b) Notwithstanding any other provision of this article to the contrary, the commissioner  
11 shall credit verified military service, training, or education toward the licensing requirements, ~~other~~  
12 ~~than~~ including examination requirements pursuant to §21-16-11 of this code, for a license issued  
13 under this article. The commissioner shall expedite the issuance of a provisional license or a  
14 license by endorsement or reciprocity under this article to an applicant who: has verified military  
15 experience or holds a current license issued by another jurisdiction that has license requirements  
16 that are substantially equivalent to the license requirements of this state.

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

19           (d) This article does not apply to:

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

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

25           (3) A person who performs only electrical, or plumbing work on a heating, ventilating, and



26 cooling system, which includes, but is not limited to, thermostats, bathroom fans, and tankless  
27 water heater ventilation, so long as the work is within the scope of practice which the person is  
28 otherwise licensed or authorized to perform; or

29 (4) A person who performs routine maintenance on any heating, ventilating, and cooling  
30 system.

**§21-16-5. Rule-making authority.**

1 (a) The Commissioner of Labor shall propose rules for legislative approval, in accordance  
2 with the provisions of §21-16-5 *et seq.* of this code, for the implementation and enforcement of  
3 the provisions of this article, which shall provide:

4 (1) Standards and procedures for issuing and renewing licenses, applications,  
5 examinations, and qualifications: Provided, That an HVAC technician may not be required to  
6 provide documentation of more than 2,000 hours of total work, training, and experience as a  
7 requirement for licensure;

8 (2) Provisions for the granting of HVAC technician licenses, without examination, to  
9 applicants who present satisfactory evidence no later than July 1, 2016, of having at least 2,000  
10 hours of experience and/or training working on heating, ventilating, and cooling systems and at  
11 least 6,000 hours of experience and/or training in heating, ventilating, and cooling or related work,  
12 to include other sheet metal industry tasks: *Provided, That if a license issued under the authority*  
13 *of this subsection subsequently lapses, the applicant is subject to all licensure requirements,*  
14 *including the examination;*

15 (3) Reciprocity provisions;

16 (4) Procedures for investigating complaints and revoking or suspending licenses, including  
17 appeal procedures;

18 (5) Fees for issuance and renewal of licenses and other costs necessary to administer the  
19 provisions of this article;

20 (6) Enforcement procedures; and

21 (7) Any other rules necessary to effectuate the purposes of this article.

22 (b) The commissioner may promulgate emergency rules pursuant to the provisions of  
23 §29A-3-15 of this code for the purpose of describing:

24 (1) Provisions for the granting of HVAC residential technician licenses without examination  
25 to qualified applicants who present satisfactory evidence no later than December 31, 2019, of  
26 having at least 2,000 hours of experience and/or training working on heating, ventilating, and  
27 cooling systems: *Provided*, That if a license issued under the authority of this subsection  
28 subsequently lapses, the applicant is subject to all licensure requirements, including the  
29 examination;

30 (2) Provisions for developing an examination required to obtain an HVAC residential  
31 technician license commensurate with the scope of practice for HVAC residential technicians as  
32 described in §21-16-2(d) of this code: *Provided*, ~~That applicants for such license examination~~  
33 ~~must provide satisfactory evidence of having at least 2,000 hours of experience and/or training~~  
34 ~~working on heating, ventilating, and cooling systems. *Provided*, however,~~ That the rules proposed  
35 by the commissioner shall provide that the HVAC residential license examination will be  
36 developed in consultation with HVAC industry representatives; and

37 (3) Provisions for allowing HVAC residential technicians to perform work on nonresidential  
38 heating, ventilating, and cooling systems subject to rules promulgated by the commissioner.

**§21-16-8. Penalties.**

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

5 (b) A person continuing to perform, or an employer continuing to authorize a person not  
6 exempt by the provisions of §21-16-3 of this code, to perform, heating, ventilating, and cooling  
7 work after the issuance of a cease and desist order ~~is guilty of a misdemeanor and, upon~~

8 ~~conviction thereof~~, is subject to the following penalties:

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

10 (2) For the second offense, a fine of not less than \$500 nor more than \$2,000;

11 (3) For the third and subsequent offenses, a fine of not less than \$1,000 nor more than  
12 \$5,000, and ~~confinement in jail for not more than one year~~ is guilty of a misdemeanor.

13 (c) Each day after official notice is given, a person continues to perform, or an employer  
14 continues to authorize a person to perform, and which is not exempt by the provisions of section  
15 three of this article, heating, ventilating and cooling work, is a separate offense and punishable  
16 accordingly.

17 (d)(1) The Commissioner of Labor may institute proceedings in the circuit court of  
18 Kanawha County or of the county where the alleged violation of the provisions of this article  
19 occurred or are occurring to enjoin any violation of any provision of this article. (2) A circuit court  
20 may by injunction compel compliance with this article, with the lawful orders of the Commissioner  
21 of Labor and with any final decision of the Commissioner of Labor.

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

24 (e) Any person adversely affected by an action of the Commissioner of Labor may appeal  
25 the action pursuant to chapter 29A of this code.

**§21-16-11. Veteran qualifications for examination for license as HVAC Technician.**

1 (a) Any person who has served as a member of any branch of the United States Armed  
2 Forces, the National Guard, or armed forces reserve, may apply to take the examination for  
3 licensure, and shall be permitted to take the examination, if:

4 (1) He or she has successfully completed a course of instruction required to qualify him or  
5 her for rating as a HVAC Technician's mate or other equivalent rating in his or her particular  
6 branch of the armed forces;

7 (2) He or she meets the requirements of this article;

8           (3) He or she has been honorably discharged from service and submits, to the  
9 Commissioner of Labor, a photostatic copy of the honorable discharge;

10           (4) He or she submits a completed application to the Commissioner of Labor; and

11           (5) He or she pays the prescribed examination and licensing fees.

12           (b) If the veteran passes the examination, he or she shall be licensed as a HVAC  
13 Technician and shall be subject to the provisions of this article.

14           (c) If the veteran does not pass the examination or examinations, any requirements  
15 relating to reexamination shall apply to the veteran the same as such requirements apply to a  
16 person who does not apply for a license under the provisions of this section.

17           (d) A veteran who has allowed more than 30 years to pass from the date of his or her  
18 successful completion of a course of instruction and the date of application for licensure in this  
19 state may be required to attend additional training courses prior to taking the examination.

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

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

#### **§29-3B-2. Necessity of license; definitions.**

1           After the effective date of this article, no electrical work may be performed, offered or  
2 engaged in for compensation or hire within the state of West Virginia by any person, firm or  
3 corporation unless such person, firm or corporation possesses a license and a certificate issued  
4 by the state Fire Marshal in accordance with this article, and a copy of the license is posted on  
5 any job in which electrical work is being performed for hire.

6           As used in this article:

7           (a) "Apprentice electrician" means a person with interest in and an aptitude for performing  
8 electrical work but who alone is not capable of performing electrical work unless directly  
9 supervised by a higher license classification.

10           (b) "Electrical contractor" means a person, firm or corporation who engages in the  
11 business of electrical work and employs master electricians, journeyman electricians, apprentice

12 electricians or other related workers for the construction, alteration or repair of any electrical  
13 wiring, equipment or systems as defined in the scope of the national electric code.

14 (c) "Electrical work" means the installation of wires, conduits, apparatus, fixtures, other  
15 appliances, equipment or systems for transmitting, carrying, controlling or using electricity as  
16 defined in the scope of the national electric code.

17 (d) "Journeyman electrician" means a person qualified by at least ~~four years~~ one year of  
18 electrical work experience to do any work installing wires, conduits, apparatus, equipment, fixtures  
19 and other appliances, provided that this classification is not authorized to design electrical  
20 systems.

21 (e) "License" means a valid and current certificate of competency issued by the state Fire  
22 Marshal.

23 (f) "Master electrician" means a person with at least ~~five~~ two years of electrical work  
24 experience, including experience in all phases of electrical wiring and installation, who is  
25 competent to design electrical systems, and to instruct and supervise the electrical work of  
26 journeyman electricians, apprentice electricians, and other related workers.

27 (g) "Specialty electrician" means a person qualified to perform electrical work in a limited  
28 or specialized area.

**§29-3B-3. Exemptions; nonapplicability of license requirements; legislative rules for  
limited reciprocity.**

1 (a) This article does not apply to and no license may be required for: ~~(1) A person who~~  
2 ~~performs electrical work with respect to any property owned or leased by that person;~~ ~~(2) a person~~  
3 ~~who performs electrical work at any manufacturing plant or other industrial establishment as an~~  
4 ~~employee of the person, firm or corporation operating the plant or establishment;~~ ~~(3) a person~~  
5 ~~who performs electrical work while employed by an employer who engages in the business of~~  
6 ~~selling appliances at retail, so long as such electrical work is performed incident to the installation~~  
7 ~~or repair of appliances sold by the employer;~~ ~~(4) a person who, while employed by a public utility~~

8 ~~or its affiliate, performs electrical work in connection with the furnishing of public utility service; or~~  
9 ~~(5) any government employee performing electrical work on government property.~~

10 (1) A person who performs electrical work with respect to any property owned or leased  
11 by that person or that person's immediate family;

12 (2) A person who performs electrical work at any manufacturing plant or other industrial  
13 establishment as an employee of the firm or corporation operating the plant or establishment;

14 (3) A person who performs electrical work while employed by an employer who engages  
15 in the business of selling appliances at retail, so long as such electrical work is performed incident  
16 to the installation or repair of appliances sold by the employer;

17 (4) A person who, while employed by a public utility or its affiliate, performs electrical work  
18 in connection with the furnishing of public utility service;

19 (5) Any government employee performing electrical work on government property; or

20 (6) Any person who performs low voltage electrical work with only low voltage wiring will  
21 not be required to have an electrician's license other than a specialty license. Low voltage  
22 electrical work is 80 volts or less, and directly related wiring. Wiring is directly related if it:

23 (A) Originated at the load-side terminals of a disconnecting means or junction box that has  
24 been installed, complete with line-side connections by others for the specific purpose of supply to  
25 the low voltage wiring system involved;

26 (B) Is permanently and legibly marked to identify the low voltage wiring system supplied;  
27 and

28 (C) Is not installed in a location considered hazardous under the National Electrical Code.

29 (b)(1) Notwithstanding any other provision of this article to the contrary, a journeyman or  
30 master electrician license may be issued for a person who is a former resident of this state, who  
31 formerly held an electrician's license issued by this state, who has obtained an equivalent  
32 electrician license from another state, and who returns to this state as a permanent resident,  
33 without requiring the person to meet the application or examination requirements that would

34 otherwise be imposed on the person by the requirements of this article when the issuance of the  
35 license is permitted by legislative rules promulgated pursuant to the provisions of this subsection.

36 (2) The State Fire Marshal shall propose rules for legislative approval in accordance with  
37 the provisions of §29A-3-1 *et seq.* of this code to provide for the licensing of electricians with  
38 equivalent qualifications described in subdivision (1) of this subsection. Notwithstanding any other  
39 provision of this code to the contrary, the legislative rules described in this subsection may not be  
40 filed as emergency rules.

**§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~~ shall 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 demonstrate that the person can perform work safely and competently and is in



43 good standing with all other jurisdictions where he or she is licensed ~~are equal to the qualifications~~  
 44 ~~required by this article~~ and upon payment of the required fee: ~~Provided, That as a condition to~~  
 45 ~~reciprocity, the other jurisdictions must extend to licensed electricians of this state, the same or~~  
 46 ~~equivalent classification.~~

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

**§29-3B-6. Relicensing without retesting after nonrenewal under certain circumstances.**

1 An electrician previously licensed by the State Fire Marshal who did not renew his or her  
 2 electrician's license may renew the license without retesting within ~~three~~ five years of the date of  
 3 the last renewal: *Provided*, That the electrician's license had not been revoked and that the  
 4 applicant pays double the current fee ~~if his or her license has been lapsed for two renewal periods,~~  
 5 ~~or triple the current fee if his or her license has been lapsed for three renewal periods.~~

**§29-3B-8. Effect of noncompliance with article; failure to obtain license.**

1 Any person, firm, corporation or employee thereof, or any representative, member or  
 2 officer of such firm or corporation, individually, entering upon or engaging in the business of  
 3 performing any electrical work as defined in this article, without obtaining the required license or  
 4 otherwise complying with this article, ~~is for the first offense guilty of a misdemeanor, and, upon~~  
 5 ~~conviction thereof,~~ shall be fined not less than \$100, nor more than \$500. For a second ~~and each~~  
 6 ~~subsequent~~ offense, the penalty and punishment is a fine of not less than \$500 nor more than  
 7 \$1,000. For the third and each subsequent offense, the penalty and punishment is a fine of not  
 8 less than \$1,000 nor more than \$5,000, and the perpetrator is guilty of a misdemeanor.

9 Each day during which such electrical work is performed without the required license or  
 10 while in noncompliance with any of the provisions of this article, after official notice that such work  
 11 is unlawful, is a separate offense.

12 Any electrical work performed by a person, firm or corporation which is determined by the

13 State Fire Marshal to constitute a safety or health hazard to members of the public or any electrical  
 14 work of an extensive nature being performed by any person without the required license or  
 15 otherwise in noncompliance with the requirements of this article or contrary to an order or rule  
 16 promulgated lawfully by the State Fire Marshal, is subject to being issued a citation or a civil action  
 17 in the name of the state in the circuit court of the county where such work is being performed for  
 18 an injunction against such person, firm or corporation, enjoining such work or violation. A circuit  
 19 court by mandatory or prohibitory injunction may compel compliance with the provisions of this  
 20 article, with the lawful orders of the State Fire Marshal and with any final decision of the State Fire  
 21 Marshal or State Fire Commission. The State Fire Marshal shall be represented in all such  
 22 proceedings by the Attorney General or his or her assistants.

### **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 “Combination Fire/Smoke Damper” means a device that meets both fire damper and  
 3 smoke damper requirements.

4 “Damper” means a fire damper, smoke damper or combination fire/smoke damper.

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

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

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

10 “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 ~~“Fire protection damper technician” means a person certified to install, test, maintain or~~

15 ~~repair a damper.~~

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

24 “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 “Fire protection work” means the installation, alteration, extension, maintenance, or testing  
29 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 “Journeyman sprinkler fitter” means a person qualified by at least ~~5,000~~ 2,000 hours of  
34 work experience or a score of at least 70 percent on NICET or equivalent examination selected  
35 by the State Fire Marshal related to installing, adjusting, repairing, and dismantling fire protection  
36 systems and who is competent to instruct and supervise the fire protection work: Provided, That  
37 current license renewal exemptions to examinations apply. ~~of a sprinkler fitter in training.~~

38 “License” means a valid and current license issued by the State Fire Marshal in  
39 accordance with the provisions of this article.

40 “Portable Fire Extinguisher Technician” means a person certified in accordance with NFPA

41 10 to install, maintain, repair, and certify portable fire extinguishers as defined by NFPA 10.

42 “Preengineered Suppression Systems Installer” means a person certified by a  
43 manufacturer to install, alter, extend, maintain, ~~layout~~ lay out or repair an agent suppression  
44 system.

45 “Preengineered Suppression Systems Technician” means a person certified to maintain  
46 or repair an agent suppression system.

47 “Single family dwelling” means a building which is occupied as, or designed or intended  
48 for occupancy as, a single residence for one or more persons.

49 “Smoke Damper” means a device within an operating (dynamic) air distribution system to  
50 control the movement of smoke.

51 ~~“Sprinkler fitter in training” means a person with interest in and an aptitude for performing  
52 fire protection work but who alone is not capable of performing such work, and who has fewer  
53 than 5,000 hours of experience installing, adjusting, repairing and dismantling fire protection  
54 systems.~~

**§29-3D-3. License required; exemptions.**

1 (a) On and after January 1, 2009, a person performing or offering to perform fire protection  
2 work in this state shall have a license issued by the State Fire Marshal, in accordance with the  
3 provisions of this article.

4 (b) On and after January 1, 2016, a person performing or offering to perform damper work  
5 in this state shall have a license issued by the State Fire Marshal, in accordance with the  
6 provisions of this article and the legislative rules promulgated pursuant hereto: *Provided*, That a  
7 person may not be licensed to perform damper work in this state without first being licensed as a  
8 HVAC technician pursuant to the provisions of §21-16-1 *et seq.* of this code.

9 (c) A person licensed under this article must carry a copy of the license on any job in which  
10 fire protection work is being performed.

11 (d) This article does not apply to:

12 (1) A person who personally performs fire protection work or damper work on a single  
13 family dwelling owned or leased, ~~and occupied~~ by that person or that person's immediate family;

14 (2) A person who performs fire protection work or damper work at any manufacturing plant  
15 or other industrial establishment as an employee of the person, firm or corporation operating the  
16 plant or establishment;

17 (3) A person who, while employed by a public utility or its affiliate, performs fire protection  
18 work in connection with the furnishing of public utility service.

19 (4) A person who performs fire protection work while engaging in the business of installing,  
20 altering or repairing water distribution or drainage lines outside the foundation walls of a building,  
21 public or private sewage treatment or water treatment systems including all associated structures  
22 or buildings, sewers or underground utility services;

23 (5) A person who performs fire protection work while engaged in the installation, extension,  
24 dismantling, adjustment, repair or alteration of a heating ventilation and air conditioning (HVAC)  
25 system, air-veyor system, air exhaust system or air handling system; or

26 (6) A person who performs fire protection work at a coal mine that is being actively mined  
27 or where coal is being processed.

**§29-3D-4. Rule-making authority.**

1 The State Fire Marshal shall propose rules for legislative approval, in accordance with the  
2 provisions of §29A-3-1 *et seq.* of this code, for the implementation and enforcement of the  
3 provisions of this article, which shall provide:

4 (1) Standards and procedures for issuing and renewing licenses, including classifications  
5 of licenses as defined in this article, applications, examinations and qualifications: *Provided*, That  
6 the rules shall require a person to be licensed as a HVAC technician or HVAC technician in  
7 training pursuant to §21-16-1 *et seq.* of this code and the rules promulgated pursuant thereto,  
8 before ~~being granted a license to perform~~ performing damper work pursuant to this article;

9 (2) Provisions for the granting of licenses without examination, to applicants who present

10 satisfactory evidence of having the expertise required to perform fire protection work at the level  
11 of the classifications defined in this article and who apply for licensure on or before July 1, 2009:  
12 *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the  
13 applicant is subject to all licensure requirements, including the examination;

14 (3) Provisions for the granting of licenses without examination, to applicants who present  
15 satisfactory evidence of having the expertise required to perform damper work at the level of the  
16 classifications defined in this article and who apply for licensure on or before July 1, 2016:  
17 *Provided*, that if a license issued under the authority of this subsection subsequently lapses, the  
18 applicant is subject to all licensure requirements, including the examination;

19 (4) Reciprocity provisions;

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

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

24 (7) Enforcement procedures; and

25 (8) Any other rules necessary to effectuate the purposes of this article.

**§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~~ possesses the qualifications for a license, the State  
4 Fire Marshal shall consider whether an applicant's prior criminal convictions bear a rational nexus  
5 on the 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.

**§29-3D-7. Penalties.**

1 (a) On and after January 1, 2009, a person performing or offering to perform fire protection  
2 work without a license issued by the State Fire Marshal, is subject to a citation.

3 (b) On and after January 1, 2016, a person performing or offering to perform, or an  
4 employer authorizing a person not exempt by the provisions of §29-3D-3 of this code, to perform,  
5 damper work without a license issued by the State Fire Marshal, is subject to a citation.

6 (c) Any person continuing to engage in fire protection work or damper work after the  
7 issuance of a citation ~~is guilty of a misdemeanor and, upon conviction thereof,~~ is subject to the  
8 following penalties:

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

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

12 (3) For the third and subsequent offenses, a fine of not less than \$1,000 nor more than  
13 \$5,000, and ~~confinement in jail for not less than thirty days nor more than one year~~ the person is  
14 guilty of a misdemeanor.

15 (d) Each day after a citation is given that a person continues to perform, or an employer  
16 continues to authorize a person to perform, fire protection work or damper work, which is not  
17 exempt by the provisions of §29-3D-3 of this code, is a separate offense and punishable  
18 accordingly.

19 (e)(1) The State Fire Marshal may institute proceedings in the circuit court of Kanawha  
20 County or the county where the alleged violation of the provisions of this article occurred or are  
21 now occurring to enjoin any violation of any provision of this article.



22           (2) A circuit court by injunction may compel compliance with the provisions of this article,  
23 with the lawful orders of the State Fire Marshal and with any final decision of the State Fire  
24 Marshal.

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

27           (f) Any person adversely affected by an action of the State Fire Marshal may appeal the  
28 action pursuant to the provisions of chapter 29A of this code.

NOTE: The purpose of this bill is to alter requirements for licensure relating to elevator mechanics, crane operators, HVAC, electricians, and plumbers.

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