

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2008

BY DELEGATES FOSTER, HORST, HAMRICK, HOWELL,

ESPINOSA, STEELE, HOLSTEIN, CLARK, KEATON AND

BURKHAMMER

[Passed March 18, 2021; in effect ninety days from passage.]

1 AN ACT 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 said code by adding thereto a new section,
3 designated §21-3C-14; to amend and reenact §21-3D-1, §21-3D-2, §21-3D-3, and §21-
4 3D-8 of said code; to amend and reenact §21-14-2 and §21-14-7 of said code; to amend
5 and reenact §21-16-2, §21-16-3, §21-16-5, and §21-16-8 of said code; to amend said
6 code by adding thereto a new section, designated §21-16-11; to amend and reenact §29-
7 3B-2, §29-3B-3, §29-3B-4, §29-3B-6, and §29-3B-8 of said code; and to amend and
8 reenact §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-6, and §29-3D-7 of said code, all relating
9 to licensure in this state; providing for state code precedence over local ordinances;
10 providing for a national standard and national certification for crane operators; providing
11 for legislative appropriation of the Crane Operators Certification Fund on a certain date;
12 providing altered definitions of journeyman and master plumber; providing for monetary
13 penalties for improperly performing plumbing work under certain conditions; providing
14 altered definition of HVAC Technician; providing that an applicant for a HVAC technician
15 license may only be required to provide documentation of up to 2,000 hours work, training,
16 and experience; eliminating requirement that HVAC residential technicians furnish
17 evidence of 2,000 hours of experience or training before being allowed to take
18 examination; establishing monetary penalties for improperly performing HVAC work under
19 certain conditions; providing veterans who meet certain conditions are eligible for HVAC
20 technician licensure; providing for altered definitions of journeyman and master
21 electricians; providing exemptions from licensure under certain conditions; providing for
22 extended time frames for electricians to renew a license without retesting; providing for
23 monetary penalties for improperly performing electrical work under certain conditions;
24 providing for definitions of fire protection workers; providing for an altered definition of
25 journeyman sprinkler fitter; providing exemption from licensure when meeting certain

26 conditions; establishing monetary penalties for improperly performing fire protection work;
27 and making other minor technical changes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 3C. ELEVATOR SAFETY.

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

1 Effective January 1, 2022, a political subdivision of this state may not require, as a
2 condition precedent to the performance of erecting, constructing, installing, altering, servicing,
3 repairing, or maintaining elevators or related conveyances covered by this article in the political
4 subdivision, a person who holds a valid license to perform such work issued under the provisions
5 of this article, to have any additional occupational license or other evidence of competence to
6 engage in the business of erecting, constructing, installing, altering, servicing, repairing, or
7 maintaining 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,
5 or 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 2,000 pounds. "Crane" does not mean a forklift, digger, derrick
8 truck, bucket truck, or any vehicle, aircraft, or helicopter, or equipment which does not have a
9 power-operated winch and load line.

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

§21-3D-2. Certification required.

1 A person may not operate a crane or tower crane without certification issued according to
2 OSHA regulation 29 CFR §1926.1427 Subpart CC and any amendments that may be made from
3 time to time. Any certifications that may expire in calendar year 2021 shall not expire until January
4 1, 2022. The commissioner may enter into a cooperative agreement with OSHA to assist in the
5 enforcement of this section.

§21-3D-3. 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.

§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) All funds remaining in the Crane Operating Certification Fund on January 1, 2022, shall
9 be appropriated by the 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 and who is competent to instruct and
6 supervise the work of a plumber in training.

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

12 (d) "Plumber in training" means a person who has not passed the journeyman plumber
13 examination: *Provided*, That the fee for plumbers in training may not be higher than \$25.00.

14 (e) "Plumbing" means the practice, materials, and fixtures utilized within a building in the
15 installation, extension, and alteration of all piping, fixtures, water treatment devices, plumbing
16 appliances, and appurtenances, in connection with sanitary drainage or storm drainage facilities;

17 the plumbing venting systems; medical gas systems; fuel oil and gas piping for residential,
18 commercial, and institutional facilities; backflow preventers; and public or private water supply
19 systems, as defined by the state building code.

20 (f) "Single family dwelling" means a building which is occupied as, or designed or intended
21 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 subject to the following penalties:

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

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

8 (3) For the third and subsequent offenses, a fine of not less than \$1,000 nor more than
9 \$5,000.

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

12 (d) The Commissioner of Labor may institute proceedings in the circuit court of the county
13 where the alleged violation of the provisions of this article occurred or is occurring to enjoin any
14 violation of any provision of this article. A circuit court by injunction may compel compliance with
15 the provisions of this article, with the lawful orders of the Commissioner of Labor, and with any
16 final decision of the Commissioner of Labor. The Commissioner of Labor shall be represented in
17 all such proceedings by the Attorney General or his or her assistants.

18 (e) Any person adversely affected by an action of the Commissioner of Labor may appeal
19 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 at least 2,000 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 less than 2,000 hours of HVAC-
29 related work, training, and experience: *Provided*, That the fee for an HVAC technician in training
30 license may not be higher than \$25.00.

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

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

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

41 (j) "Single family dwelling" means a building that is occupied as, or designed or intended
42 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,
12 including examination requirements pursuant to §21-16-11 of this code, for a license issued under
13 this article. The commissioner shall expedite the issuance of a provisional license or a license by
14 endorsement or reciprocity under this article to an applicant who has verified military experience
15 or holds a current license issued by another jurisdiction that has license requirements that are
16 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 the rules proposed by the commissioner
33 shall provide that the HVAC residential license examination will be developed in consultation with
34 HVAC industry representatives; and

35 (3) Provisions for allowing HVAC residential technicians to perform work on nonresidential
36 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 subject to the following penalties:

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

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

10 (3) For the third and subsequent offenses, a fine of not less than \$1,000 nor more than
11 \$5,000.

12 (c) Each day after official notice is given, a person continues to perform, or an employer
13 continues to authorize a person to perform, and which is not exempt by the provisions of section

14 three of this article, heating, ventilating, and cooling work, is a separate offense and punishable
15 accordingly.

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

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

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

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

§21-16-11. Veteran qualifications 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 for licensure, if:

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

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

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

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

10 (5) He or she pays the prescribed licensing fees.

11 (b) A veteran who has allowed more than 30 years to pass from the date of his or her
12 successful completion of a course of instruction and the date of application for licensure in this
13 state may be required to attend additional training courses.

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: *Provided*, That any person who is
5 assisting a journeyman or master electrician does not require a license to perform such
6 supervised work, and a copy of the license is posted on any job in which electrical work is being
7 performed for hire.

8 As used in this article:

9 (a) "Electrical contractor" means a person, firm, or corporation who engages in the
10 business of electrical work and employs master electricians, journeyman electricians, or other
11 related workers for the construction, alteration, or repair of any electrical wiring, equipment, or
12 systems as defined in the scope of the national electric code.

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

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

19 (d) "License" means a valid and current certificate of competency issued by the state Fire
20 Marshal.

21 (e) "Master electrician" means a person with at least two years of electrical work
22 experience, including experience in all phases of electrical wiring and installation, who is

23 competent to design electrical systems, and to instruct and supervise the electrical work of
24 journeyman electricians, and other related workers.

25 (f) "Specialty electrician" means a person qualified to perform electrical work in a limited
26 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:

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

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

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

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

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

12 (6) Any person who performs low voltage electrical work with only low voltage wiring will
13 not be required to have an electrician's license other than a specialty license. For purposes of this
14 section, low voltage electrical work is 80 volts or less, and directly related wiring. Wiring is directly
15 related if it:

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

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

20 and

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

22 (b)(1) Notwithstanding any other provision of this article to the contrary, a journeyman or
23 master electrician license may be issued for a person who is a former resident of this state, who
24 formerly held an electrician's license issued by this state, who has obtained an equivalent
25 electrician license from another state, and who returns to this state as a permanent resident,
26 without requiring the person to meet the application or examination requirements that would
27 otherwise be imposed on the person by the requirements of this article when the issuance of the
28 license is permitted by legislative rules promulgated pursuant to the provisions of this subsection.

29 (2) The State Fire Marshal shall propose rules for legislative approval in accordance with
30 the provisions of §29A-3-1 *et seq.* of this code to provide for the licensing of electricians with
31 equivalent qualifications described in subdivision (1) of this subsection. Notwithstanding any other
32 provision of this code to the contrary, the legislative rules described in this subsection may not be
33 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, and temporary electrician license. Additional
3 classes of specialty electrician license may be issued by the State Fire Marshal.

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

9 (1) The State Fire Marshal may not disqualify an applicant from initial licensure because
10 of a prior criminal conviction that remains unreversed unless that conviction is for a crime that

11 bears a rational nexus to the activity requiring licensure. In determining whether a criminal
12 conviction bears a rational nexus to a profession or occupation, the State Fire Marshal shall
13 consider at a minimum:

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

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

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

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

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

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

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

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

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

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

38 (d) To the extent that other jurisdictions provide for the licensing of electricians, the State
39 Fire Marshal shall grant the same or equivalent classification of license without written
40 examination upon satisfactory proof furnished to the State Fire Marshal that the qualifications of
41 the applicant demonstrate that the person can perform work safely and competently and is in
42 good standing with all other jurisdictions where he or she is licensed, and upon payment of the
43 required fee.

44 (e) In addition to any other information required, the applicant's social security number
45 shall be recorded on any application for a license submitted pursuant to the provisions of this
46 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 five years of the date of the
3 last renewal: *Provided*, That the electrician's license had not been revoked and that the applicant
4 pays double the current fee.

§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, for the first offense shall be fined not less than \$100, nor
5 more than \$500. For a second offense, the penalty and punishment is a fine of not less than \$500
6 nor more than \$1,000. For the third and each subsequent offense, the penalty and punishment is
7 a fine of not less than \$1,000 nor more than \$5,000.

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

11 Any electrical work performed by a person, firm, or corporation which is determined by the
12 State Fire Marshal to constitute a safety or health hazard to members of the public or any electrical
13 work of an extensive nature being performed by any person without the required license or
14 otherwise in noncompliance with the requirements of this article or contrary to an order or rule
15 promulgated lawfully by the State Fire Marshal, is subject to being issued a citation or a civil action
16 in the name of the state in the circuit court of the county where such work is being performed for
17 an injunction against such person, firm, or corporation, enjoining such work or violation. A circuit
18 court by mandatory or prohibitory injunction may compel compliance with the provisions of this
19 article, with the lawful orders of the State Fire Marshal and with any final decision of the State Fire
20 Marshal or State Fire Commission. The State Fire Marshal shall be represented in all such
21 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 smoke
3 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, 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 layout technician” is an individual who has achieved National Institute for
15 Certification in Engineering Technologies (NICET) Level III, or has achieved from the National
16 Fire Protection Association a certification in Certified Water Based Systems Professional
17 (CW BSP), or has passed an exam approved by the state Fire Marshal from the National
18 Inspection Testing Certification (NITC) organization, or higher certification as recognized by the
19 state Fire Marshal, and who has the knowledge, experience, and skills necessary to lay out fire
20 protection systems based on engineering design documents.

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

25 “Fire protection work” means the installation, alteration, extension, maintenance, or testing
26 of all piping, materials, and equipment inside a building, including the use of shop drawings
27 prepared by a fire protection layout technician, in connection with the discharge of water, other
28 special fluids, chemicals, or gases, and backflow preventers for fire protection for the express
29 purpose of extinguishing or controlling fire.

30 “Journeyman sprinkler fitter” means a person qualified by at least 2,000 hours of work
31 experience installing, adjusting, repairing, and dismantling fire protection systems and who is
32 competent to instruct and supervise fire protection work: *Provided*, That current license renewal
33 exemptions to examinations apply.

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

36 “Portable fire extinguisher technician” means a person certified in accordance with NFPA
37 10 to install, maintain, repair, and certify portable fire extinguishers as defined by NFPA 10.

38 “Preengineered suppression systems installer” means a person certified by a
39 manufacturer to install, alter, extend, maintain, lay out, or repair an agent suppression system.

40 “Preengineered suppression systems technician” means a person certified to maintain or
41 repair an agent suppression system.

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

44 “Smoke damper” means a device within an operating (dynamic) air distribution system to
45 control the movement of smoke.

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

6 (c) This article does not apply to:

7 (1) A person who personally performs fire protection work or damper work on a single
8 family dwelling owned or leased by that person or that person’s immediate family;

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

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

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

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

21 (6) A person who performs fire protection work at a coal mine that is being actively mined
22 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 pursuant to §21-16-1 *et seq.*
7 of this code and the rules promulgated pursuant thereto, before performing damper work pursuant
8 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 possesses 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 fire protection work or 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) Any person continuing to engage in fire protection work after the issuance of a citation
4 is subject to the following penalties:

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

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

7 (3) For the third and subsequent offenses, a fine of not less than \$1,000 nor more than
8 \$5,000.

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

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

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2021.

.....
Governor