

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4392**

5  
6 (By Delegates Morgan, Diserio, Jones,  
7 D. Poling and Barker)

8 [Passed March 6, 2014; in effect ninety days from passage.]  
9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §21-16-1, §21-16-2,  
12 §21-16-3, §21-16-4, §21-16-5, §21-16-6, §21-16-7, §21-16-8,  
13 §21-16-9 and §21-16-10; to amend and reenact §29-3-12b of said  
14 code; and to amend and reenact sections §29-3D-1, §29-3D-2,  
15 §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7 and §29-3D-8  
16 of said code, all relating to regulating persons who perform  
17 work on heating, ventilating and cooling systems and dampers;  
18 defining terms; requiring persons who perform work on heating,  
19 ventilating and cooling systems to be licensed by the  
20 Commissioner of Labor; requiring persons who perform work on  
21 dampers to be licensed by the State Fire Marshal; providing  
22 for exemptions from licensure; providing a scope of practice  
23 for heating, ventilating and cooling technicians and  
24 technicians-in-training; authorizing the commissioner to  
25 promulgate legislative rules; authorizing the State Fire

1 Marshal to promulgate legislative rules; authorizing  
2 enforcement procedures; authorizing interagency agreements;  
3 authorizing the issuance, renewal, denial, suspension and  
4 revocation of licenses; authorizing fines for violation of  
5 articles; providing for criminal penalties; providing that no  
6 political subdivision of the state may mandate additional  
7 licensing requirements; and authorizing and providing for the  
8 disposition of fees.

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

10 That the Code of West Virginia, 1931, as amended, be amended  
11 by adding thereto a new article, designated §21-16-1, §21-16-2,  
12 §21-16-3, §21-16-4, §21-16-5, §21-16-6, §21-16-7, §21-16-8, §21-16-  
13 9 and §21-16-10; that §29-3-12b of said code be amended and  
14 reenacted; and that §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-  
15 5, §29-3D-6, §29-3D-7 and §29-3D-8 of said code be amended and  
16 reenacted, all to read as follows:

17 **CHAPTER 21. LABOR**

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

19 **§21-16-1. Declaration of purpose.**

20 The provisions of this article are intended to protect the  
21 health, safety and welfare of the public as well as public and  
22 private property by assuring the competence of those who perform  
23 work on a heating, ventilating and cooling system through licensure  
24 by the Commissioner of Labor.

1 **§21-16-2. Definitions.**

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

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

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

10 (1) "Heating system" means a system in which heat is  
11 transmitted by radiation, conduction or convection, or a  
12 combination of any of these methods, to the air, surrounding  
13 surfaces, or both, and includes a forced air system that uses air  
14 being moved by mechanical means to transmit heat, but does not  
15 include a fireplace or woodburning stove not incorporated into or  
16 used as a primary heating system;

17 (2) "Ventilating system" means the natural or mechanical  
18 process of supplying air to, or removing air from, any space  
19 whether the air is conditioned or not conditioned, at a rate of  
20 airflow of more than two hundred fifty cubic feet per minute; and

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

24 (c) "HVAC Technician" means a person licensed to install,  
25 test, maintain and repair heating, ventilating and cooling systems.

1 (d) "HVAC Technician in Training" means a person with interest  
2 in and an aptitude for performing installation, maintenance and  
3 repair work to a heating, ventilating and cooling system as defined  
4 in this article, but who alone is not capable or authorized to  
5 perform heating, ventilating and cooling system work unless  
6 directly supervised by a HVAC technician.

7 (e) "License" means a valid and current license issued by the  
8 Commissioner of Labor in accordance with the provisions of this  
9 article.

10 (f) "Routine maintenance" means work performed on a routine  
11 schedule that includes cleaning and/or replacing filters, greasing  
12 or lubricating motor bearings, adjusting and/or replacing belts,  
13 checking system temperature, checking gas temperature, adjusting  
14 gas pressure as required, and checking voltage and amperage draw on  
15 heating, ventilating and cooling systems.

16 (g) "Single family dwelling" means a building which is  
17 occupied as, or designed or intended for occupancy as, a single  
18 residence for one or more persons.

19 **§21-16-3. License required; exemptions.**

20 (a) On and after January 1, 2016, a person performing or  
21 offering to perform work on a heating, ventilating and cooling  
22 system in this state shall have a license issued by the  
23 Commissioner of Labor, in accordance with the provisions of this  
24 article and the legislative rules promulgated pursuant hereto.

25 (b) A person licensed under this article shall carry a copy of

1 the license on any job in which heating, ventilating and cooling  
2 work is being performed.

3 (c) This article does not apply to:

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

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

11 (3) A person who performs only electrical or plumbing work on  
12 a heating, ventilating and cooling system, so long as the work is  
13 within the scope of practice which the person is otherwise licensed  
14 or authorized to perform; or

15 (4) A person who performs routine maintenance as a direct  
16 employee of the person, firm or corporation that owns or operates  
17 the facility where the heating, ventilating or cooling system  
18 equipment is located.

19 **§21-16-4. Scope of practice.**

20 (a) A HVAC technician in training is authorized to assist in  
21 providing heating, ventilating and cooling work only under the  
22 direction and control of a HVAC technician.

23 (b) A HVAC technician is authorized to provide heating,  
24 ventilating and cooling work without supervision.

25 (c) Persons licensed under this article are subject to the

1 applicable provisions of the Contractor Licensing Act in article  
2 eleven of this chapter in the performance of work authorized by  
3 this article.

4 **§21-16-5. Rule-making authority.**

5 The Commissioner of Labor shall propose rules for legislative  
6 approval, in accordance with the provisions of article three,  
7 chapter twenty-nine-a of this code, for the implementation and  
8 enforcement of the provisions of this article, which shall provide:

9 (1) Standards and procedures for issuing and renewing  
10 licenses, applications, examinations and qualifications;

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

21 (3) Reciprocity provisions;

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

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

1 (6) Enforcement procedures; and

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

4 **§21-16-6. Enforcement; interagency agreements authorized.**

5 (a) The Commissioner of Labor and his or her Deputy  
6 Commissioner or any compliance officer of the Division of Labor as  
7 authorized by the Commissioner of Labor may enforce the provisions  
8 of this article and may, at reasonable hours, enter any building or  
9 premises where heating, ventilating and cooling work is performed  
10 and issue cease and desist orders for noncompliance.

11 (b) The Commissioner of Labor may enter into an interagency  
12 agreement with the State Fire Marshal for the mutual purpose of  
13 enforcing the provisions of this article and the provisions of  
14 article three-e, chapter twenty-nine of this code.

15 **§21-16-7. Denial, suspension and revocation of license.**

16 (a) The Commissioner of Labor may deny a license to any  
17 applicant who fails to comply with the provisions of this article  
18 or the rules established by the Commissioner of Labor or who lacks  
19 the necessary qualifications.

20 (b) The Commissioner of Labor may, upon complaint or upon his  
21 or her own inquiry, and after notice to the licensee, suspend or  
22 revoke a licensee's license if:

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

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

3           (3) The licensee incompetently or unsafely performs heating,  
4 ventilating and cooling work; or

5           (4) The licensee violated any statute of this state, any  
6 legislative rule or any ordinance of any municipality or county of  
7 this state which protects the consumer or public against unfair,  
8 unsafe, unlawful or improper business practices.

9 **§21-16-8. Penalties.**

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

15           (b) A person continuing to perform, or an employer continuing  
16 to authorize a person not exempt by the provisions of section three  
17 of this article, to perform, heating, ventilating and cooling work  
18 after the issuance of a cease and desist order is guilty of a  
19 misdemeanor and, upon conviction thereof, is subject to the  
20 following penalties:

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

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

25           (3) For the third and subsequent offenses, a fine of not less

1 than \$1,000 nor more than \$5,000, and confinement in jail for not  
2 more than one year.

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

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

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

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

17 (e) Any person adversely affected by an action of the  
18 Commissioner of Labor may appeal the action pursuant to chapter  
19 twenty-nine-a of this code.

20 **§21-16-9. Inapplicability of local ordinances.**

21 On and after January 1, 2016, a political subdivision of this  
22 state may not require, as a condition precedent to the performance  
23 of work on heating, ventilating and cooling in the political  
24 subdivision, a person who holds a valid and current license issued  
25 under this article, to have any other license or other evidence of

1 competence beyond those required by the Commissioner of Labor to  
2 perform work on heating, ventilating and cooling systems.

3 **§21-16-10. Disposition of fees.**

4 All fees paid pursuant to this article, shall be paid to the  
5 Commissioner of Labor and deposited in "West Virginia Contractor  
6 Licensing Board Fund" for the use of the Commissioner of Labor in  
7 a manner consistent with section seventeen, article eleven, chapter  
8 twenty-one of this Code.

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

10 **ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

11 **§29-3-12b. Fees.**

12 (a) The State Fire Marshal may establish fees in accordance  
13 with the following:

14 (1) For blasting. -- Any person storing, selling or using  
15 explosives shall first obtain a permit from the State Fire Marshal.  
16 The permit shall be valid for one year. The State Fire Marshal may  
17 charge a fee for the permit.

18 (2) For inspections of schools or day-care facilities. -- The  
19 State Fire Marshal may charge a fee of up to \$25.00 per annual  
20 inspection for inspection of schools or day-care facilities:  
21 Provided, That only one such fee may be charged per year for any  
22 building in which a school and a day-care facility are colocated:  
23 Provided, however, That any school or day-care facility may not be  
24 charged for an inspection more than one time per twelve-month

1 period.

2       (3) For inspections of hospitals or nursing homes. -- The  
3 State Fire Marshal may charge an inspection fee of up to \$100.00  
4 per annual inspection of hospitals or nursing homes: Provided, That  
5 any hospital or nursing home may not be charged for an inspection  
6 more than one time per twelve-month period.

7       (4) For inspections of personal care homes or board and care  
8 facilities. -- The State Fire Marshal may charge an inspection fee  
9 of up to \$50.00 per annual inspection for inspections of personal  
10 care homes or board and care facilities: Provided, That any  
11 personal care home or board and care facility may not be charged  
12 for an inspection more than one time per twelve-month period.

13       (5) For inspections of residential occupancies. -- The State  
14 Fire Marshal may charge an inspection fee of up to \$100.00 for each  
15 inspection of a residential occupancy. For purposes of this  
16 subdivision, "residential occupancies" are those buildings in which  
17 sleeping accommodations are provided for normal residential  
18 purposes.

19       (6) For inspections of mercantile occupancies. -- The State  
20 Fire Marshal may charge an inspection fee of up to \$100.00 for  
21 inspections of mercantile occupancies: Provided, That if the  
22 inspection is in response to a complaint made by a member of the  
23 public, the State Fire Marshal shall obtain from the complainant an  
24 advance inspection fee of \$25.00. This fee shall be returned to the  
25 complainant if, after the State Fire Marshal has made the

1 inspection, he or she finds that the complaint was accurate and  
2 justified, and he or she shall thereafter collect an inspection fee  
3 of up to \$100.00 from the mercantile occupancy. If, after the  
4 inspection has been performed, it appears to the State Fire Marshal  
5 that the complaint was not accurate or justified, the State Fire  
6 Marshal shall keep the \$25.00 advance inspection fee obtained from  
7 the complainant and may not collect any fees from the mercantile  
8 occupant. For purposes of this section, "mercantile occupancy"  
9 includes stores, markets and other rooms, buildings or structures  
10 for the display and sale of merchandise.

11 (7) For business occupancies. -- The State Fire Marshal may  
12 charge an inspection fee of up to \$100.00 for inspections of  
13 business occupancies: Provided, That the provisions in subdivision  
14 (6) of this section shall apply regarding complaints by members of  
15 the public. For purposes of this section, "business occupancies"  
16 are those buildings used for the transaction of business, other  
17 than mercantile occupancies, for the keeping of accounts and  
18 records and similar purposes.

19 (8) For inspections of assembly occupancies. -- The State Fire  
20 Marshal may charge an inspection fee not more than one time per  
21 twelve-month period for the inspection of assembly occupancies. The  
22 inspection fee shall be assessed as follows: For Class C assembly  
23 facilities, an inspection fee not to exceed \$50.00; for Class B  
24 assembly facilities, an inspection fee not to exceed \$75.00; and  
25 for Class A facilities, an inspection fee not to exceed \$100.00.

1 For purposes of this subdivision, an "assembly occupancy"  
2 includes, but is not limited to, all buildings or portions of  
3 buildings used for gathering together fifty or more persons for  
4 such purposes as deliberation, worship, entertainment, eating,  
5 drinking, amusement or awaiting transportation. For purposes of  
6 this section, a "Class C assembly facility" is one that  
7 accommodates fifty to three hundred persons; a "Class B facility"  
8 is one which accommodates more than three hundred persons but less  
9 than one thousand persons; and a "Class A facility" is one which  
10 accommodates more than one thousand persons.

11 (b) The State Fire Marshal may collect fees for the fire  
12 safety review of plans and specifications for new and existing  
13 construction. Fees shall be paid by the party or parties receiving  
14 the review.

15 (1) Structural barriers and fire safety plans review. -- The  
16 fee is \$1.00 for each \$1,000.00 of construction cost up to the  
17 first \$1 million. Thereafter, the fee is eighty cents for each  
18 \$1,000.00 of construction cost.

19 (2) Sprinkler system review. -- The fee charged for the review  
20 of an individual sprinkler system is as follows: Number of heads:  
21 One to two hundred -- \$85.00; two hundred one to three hundred --  
22 \$100.00; three hundred one to seven hundred fifty -- \$120.00; over  
23 seven hundred fifty -- \$120.00 plus ten cents per head over seven  
24 hundred fifty.

25 (3) Fire alarm systems review. -- The fee charged for the

1 review of a fire alarm system is \$50.00 for each ten thousand  
2 square feet of space with a \$50.00 minimum charge.

3 (4) Range hood extinguishment system review. -- The fee is  
4 \$25.00 per individual system reviewed.

5 (5) Carpet specifications. -- The fee for carpet review and  
6 approval is \$20.00 per installation.

7 (c) All fees authorized and collected pursuant to this  
8 article, article three-b, article three-c and article three-d of  
9 this chapter shall be paid to the state fire commission and  
10 thereafter deposited into the special account in the state treasury  
11 known as the "fire marshal fees fund". Expenditures from the fund  
12 shall be for the purposes set forth in this article and articles  
13 three-b, three-c and three-d of this chapter and are not authorized  
14 from collections but are to be made only in accordance with  
15 appropriation by the Legislature and in accordance with the  
16 provisions of article three, chapter twelve of this code and upon  
17 fulfillment of the provisions of article two, chapter five-a of  
18 this code. Any balance remaining in the special account at the end  
19 of any fiscal year shall be reappropriated to the next fiscal year.

20 (d) If the owner or occupant of any occupancy arranges a time  
21 and place for an inspection with the State Fire Marshal and is not  
22 ready for the occupancy to be inspected at the appointed time and  
23 place, the owner or occupant thereof shall be charged the  
24 inspection fee provided in this section unless at least forty-eight  
25 hours prior to the scheduled inspection the owner or occupant

1 requests the State Fire Marshal to reschedule the inspection. In  
2 the event a second inspection is required by the State Fire Marshal  
3 as a result of the owner or occupant failing to be ready for the  
4 inspection when the State Fire Marshal arrives, the State Fire  
5 Marshal shall charge the owner or occupant of the occupancy the  
6 inspection fees set forth above for each inspection trip required.

7 (e) The fees provided for in this section shall remain in  
8 effect until such time as the Legislature has approved rules  
9 promulgated by the State Fire Marshal, in accordance with the  
10 provisions of article three, chapter twenty-nine-a of this code,  
11 establishing a schedule of fees for services.

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

13 **§29-3D-1. Declaration of purpose.**

14 The provisions of this article are intended to protect the  
15 health, safety and welfare of the public as well as public and  
16 private property by assuring the competence of those who perform  
17 fire protection work and damper work through licensure by the State  
18 Fire Marshal.

19 **§29-3D-2. Definitions.**

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

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

24 (b) "Damper" means a fire damper, smoke damper or combination  
25 fire/smoke damper.

1 (c) "Damper work" means to install, test, maintain or repair  
2 a damper.

3 (d) "Engineered Suppression Systems Installer" means a person  
4 certified by a manufacturer to install, alter, extend, maintain,  
5 layout or repair an agent suppression system.

6 (e) "Engineered Suppression Systems Technician" means a person  
7 certified by a manufacturer to maintain or repair an agent  
8 suppression system.

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

15 (g) "Fire protection damper technician" means a person  
16 certified to install, test, maintain or repair a damper.

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

23 (i) "Fire protection layout technician" is an individual who  
24 has achieved National Institute for Certification in Engineering  
25 Technologies (NICET) Level III or higher certification, and who has

1 the knowledge, experience and skills necessary to layout fire  
2 protection systems based on engineering design documents.

3 (j) "Fire protection system" means any fire protection  
4 suppression device or system designed, installed and maintained in  
5 accordance with the applicable National Fire Protection Association  
6 (NFPA) codes and standards, but does not include public or private  
7 mobile fire vehicles.

8 (k) "Fire protection work" means the installation, alteration,  
9 extension, maintenance, or testing of all piping, materials and  
10 equipment inside a building, including the use of shop drawings  
11 prepared by a fire protection layout technician, in connection with  
12 the discharge of water, other special fluids, chemicals or gases  
13 and backflow preventers for fire protection for the express purpose  
14 of extinguishing or controlling fire.

15 (l) "Journeyman sprinkler fitter" means a person qualified by  
16 at least ten thousand hours of work experience installing,  
17 adjusting, repairing and dismantling fire protection systems and  
18 who is competent to instruct and supervise the fire protection work  
19 of a sprinkler fitter in training.

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

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

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

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

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

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

11 (s) "Sprinkler fitter in training" means a person with  
12 interest in and an aptitude for performing fire protection work but  
13 who alone is not capable of performing such work, and who has fewer  
14 than ten thousand hours of experience installing, adjusting,  
15 repairing and dismantling fire protection systems.

16 **29-3D-3. License required; exemptions.**

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

21 (b) On and after January 1, 2016, a person performing or  
22 offering to perform damper work in this state shall have a license  
23 issued by the State Fire Marshal, in accordance with the provisions  
24 of this article and the legislative rules promulgated pursuant  
25 hereto: *Provided*, That a person may not be licensed to perform

1 damper work in this state without first being licensed as a HVAC  
2 technician pursuant to the provisions of article sixteen, chapter  
3 twenty-one of this code.

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

7 (d) This article does not apply to:

8 (1) A person who personally performs fire protection work or  
9 damper work on a single family dwelling owned or leased, and  
10 occupied by that person;

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

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

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

24 (5) A person who performs fire protection work while engaged  
25 in the installation, extension, dismantling, adjustment, repair or

1 alteration of a heating ventilation and air conditioning (HVAC)  
2 system, air-veyor system, air exhaust system or air handling  
3 system; or

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

6 **§29-3D-4. Rule-making authority.**

7 The State Fire Marshal shall propose rules for legislative  
8 approval, in accordance with the provisions of article three,  
9 chapter twenty-nine-a of this code, for the implementation and  
10 enforcement of the provisions of this article, which shall provide:

11 (1) Standards and procedures for issuing and renewing  
12 licenses, including classifications of licenses as defined in this  
13 article, applications, examinations and qualifications: *Provided,*  
14 That the rules shall require a person to be licensed as a HVAC  
15 technician or HVAC technician in training pursuant to article  
16 sixteen, chapter twenty-one of this code and the rules promulgated  
17 pursuant thereto, before being granted a license to perform damper  
18 work pursuant to this article;

19 (2) Provisions for the granting of licenses without  
20 examination, to applicants who present satisfactory evidence of  
21 having the expertise required to perform fire protection work at  
22 the level of the classifications defined in this article and who  
23 apply for licensure on or before July 1, 2009: *Provided,* That if  
24 a license issued under the authority of this subsection  
25 subsequently lapses, the applicant is subject to all licensure

1 requirements, including the examination;

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

10       (4) Reciprocity provisions;

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

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

15       (7) Enforcement procedures; and

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

18 **§29-3D-5. Enforcement.**

19       (a) The State Fire Marshal and his or her deputy fire marshal,  
20 assistant fire marshal or assistant fire marshal-in-training, is  
21 authorized to enforce the provisions of this article, and may, at  
22 reasonable hours, enter any building or premises where fire  
23 protection work or damper work is performed and issue citations for  
24 noncompliance.

25       (b) The State Fire Marshal may enter into an interagency

1 agreement with the Commissioner of Labor for the mutual purpose of  
2 enforcing this article and article sixteen, chapter twenty-one of  
3 this code.

4 **§29-3D-6. Denial, suspension and revocation of license.**

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

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

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

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

16 (3) The licensee incompetently or unsafely performs plumbing,  
17 fire protection work or damper work; or

18 (4) The licensee violated any statute of this state, any  
19 legislative rule or any ordinance of any municipality or county of  
20 this state which protects the consumer or public against unfair,  
21 unsafe, unlawful or improper business practices.

22 **§29-3D-7. Penalties.**

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

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

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

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

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

15 (3) For the third and subsequent offenses, a fine of not less  
16 than \$1,000 nor more than \$5,000, and confinement in jail for not  
17 less than thirty days nor more than one year.

18

19 (d) Each day after a citation is given that a person continues  
20 to perform, or an employer continues to authorize a person to  
21 perform, fire protection work or damper work, which is not exempt  
22 by the provisions of section three of this article, is a separate  
23 offense and punishable accordingly.

24 (e) (1) The State Fire Marshal may institute proceedings in the  
25 circuit court of Kanawha County or the county where the alleged

1 violation of the provisions of this article occurred or are now  
2 occurring to enjoin any violation of any provision of this article.

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

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

8 (f) Any person adversely affected by an action of the State  
9 Fire Marshal may appeal the action pursuant to the provisions of  
10 chapter twenty-nine-a of this code.

11 **§29-3D-8. Inapplicability of local ordinances.**

12 (a) On and after January 1, 2009, a political subdivision of  
13 this state may not require, as a condition precedent to the  
14 performance of fire protection work in the political subdivision,  
15 a person who holds a valid and current license to perform fire  
16 protection work issued under the provisions of this article, to  
17 have any other license or other evidence of competence as a fire  
18 protection worker.

19 (b) On and after January 1, 2016, a political subdivision of  
20 this state may not require, as a condition precedent to the  
21 performance of damper work in the political subdivision, a person  
22 who holds a valid and current license to perform damper work issued  
23 under this article to have any other license or other evidence of  
24 competence beyond those required by the State Fire Marshal and the  
25 Commissioner of Labor to perform damper work.

