

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4401**

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COOPER, FOSTER, HOUSEHOLDER, BATES, BARRETT AND  
PHILLIPS

[Originating in the Committee on Finance;

February 14, 2018.]



1 A BILL to amend and reenact §21-3-7 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §21-3C-11; to amend and reenact §21-3D-8; to amend and reenact §21-5-  
3 5c; to amend and reenact §21-9-9; to amend and reenact §21-10-4; to amend and reenact  
4 §21-11-17; to amend and reenact §21-14-9; to amend and reenact §21-15-7; to amend  
5 and reenact §21-16-10; to amend and reenact §47-1-8, §47-1-20, §47-1-21 and §47-1-  
6 22; and to amend and reenact §47-1A-14, all relating to the elimination of certain authority  
7 regarding collection and use of fees by the Commissioner of the Division of Labor;  
8 eliminating authority to use certain excess funds; eliminating requirement to charge certain  
9 fees; and eliminating certain rulemaking authority.

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

## **CHAPTER 21. LABOR**

### **ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.**

#### **§21-3-7. Regulation of operation of steam boilers.**

1 (a) Any person owning or operating a steam boiler carrying more than fifteen pounds  
2 pressure per square inch (except boilers on railroad locomotives subject to inspection under  
3 federal laws; portable boilers used for agricultural purposes; boilers on automobiles; boilers of  
4 steam fire engines brought into the state for temporary use in times of emergency for the purpose  
5 of checking conflagrations; boilers used in private residences which are used solely for residential  
6 purposes; any sectional boilers; small portable boilers commonly used in the oil and gas industry  
7 about their wells and tool houses; and boilers under the jurisdiction of the United States) in this  
8 state shall first obtain a permit to operate a steam boiler from the Commissioner of Labor, or from  
9 an inspector working under his or her jurisdiction.

10 (b) Applications for permits to operate a steam boiler must be accompanied by a sworn  
11 statement made by the owner or operator of such boiler, setting forth the condition of the boiler  
12 and its appurtenances at which time, if the facts disclosed by such statement meet the safety

13 requirements established under this article, the Commissioner of Labor shall issue a temporary  
14 permit, which shall be valid until such boiler has been inspected by a boiler inspector authorized  
15 by the state Commissioner of Labor; thereupon, if the boiler meets the safety requirements  
16 established under this article, the Commissioner of Labor shall issue an annual permit to operate  
17 such steam boiler: *Provided*, That boilers which are insured by an insurance company operating  
18 in this state and which are inspected by such insurance company's boiler inspector shall not be  
19 subject to inspection by the state Division of Labor, during any twelve-month period during which  
20 an inspection is made by the insurance company's boiler inspector.

21 (c) The Commissioner of Labor or state boiler inspector shall have the authority to inspect  
22 steam boilers in this state. To carry out the provisions of this section, the Commissioner of Labor  
23 shall prescribe rules and regulations under which boilers may be constructed and operated,  
24 according to their class. The Commissioner of Labor may revoke any permit to operate a steam  
25 boiler if the rules prescribed by the Commissioner of Labor, or his or her authorized  
26 representative, are violated or if a condition shall prevail which is hazardous to the life and health  
27 of persons operating or employed at or around the boiler. Any person or corporation who shall  
28 operate a steam boiler for which a permit is necessary under the provisions of this section, without  
29 first obtaining such permit to operate a steam boiler, is guilty of a misdemeanor, and, upon  
30 conviction thereof, shall be fined not less than \$100 nor more than \$500. Every day a steam boiler  
31 requiring a permit to operate is operated without the permit is a separate offense.

32 (d) The commissioner shall charge an annual fee to be established by legislative rule for  
33 the inspection of boilers by the division, for the processing of inspection reports from insurance  
34 companies, for the issuing of annual permits to operate boilers and for the commissioning of  
35 insurance company boiler inspectors. The commissioner shall propose rules for legislative  
36 approval, in accordance with ~~article three, chapter twenty-nine-a of this code~~ §29A-3-1 et seq. of  
37 this code for the implementation and enforcement of this section. No fee may be charged for the

38 inspection of boilers used on mobile equipment or vehicles used for occasional entertainment or  
39 display purposes.

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

### **ARTICLE 3C. ELEVATOR SAFETY.**

#### **§21-3C-11. Disposition of fees; legislative rules.**

1 (a) The division shall propose rules for legislative approval in accordance with ~~article three,~~  
2 ~~chapter twenty-nine-a of this code~~ §29A-3-1 et seq. of this code, for the implementation and  
3 enforcement of the provisions of this article, which shall provide:

4 (1) Standards, qualifications and procedures for submitting applications, taking  
5 examinations and issuing and renewing licenses, certificates of competency and certificates of  
6 operation of the three licensure classifications set forth in ~~section ten-a of this article~~ §21-3C-10a  
7 of this code;

8 (2) For the renewal of a license, even if the licensee is unemployed or not working in the  
9 industry: *Provided*, That to engage or offer to engage in the business of erecting, constructing,  
10 installing, altering, servicing, repairing or maintaining an elevator or related conveyance covered  
11 by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant  
12 to ~~section six, article eleven, chapter twenty-one~~ §21-11-6 of the code;

13 (3) Qualifications and supervision requirements for elevator apprentices;

14 (4) Provisions for the granting of licenses without examination, to applicants who present  
15 satisfactory evidence of having the expertise required to perform work as defined in this article  
16 and who apply for licensure on or before July 1, 2010: *Provided*, That if a license issued under

17 the authority of this subsection subsequently lapses, the applicant may, at the discretion of the  
18 commissioner, be subject to all licensure requirements, including the examination;

19 (5) Provisions for the granting of emergency licenses in the event of an emergency due to  
20 disaster, act of God or work stoppage when the number of persons in the state holding licenses  
21 issued pursuant to this article is insufficient to cope with the emergency;

22 (6) Provisions for the granting of temporary licenses in the event that there are no elevator  
23 mechanics available to engage in the work of an elevator mechanic as defined by this article;

24 (7) Continuing education requirements;

25 (8) Procedures for investigating complaints and revoking or suspending licenses,  
26 certificates of competency and certificates of operation, including appeal procedures;

27 (9) Fees for testing, issuance and renewal of licenses, certificates of competency and  
28 certificates of operation, and other costs necessary to administer the provisions of this article;

29 (10) Enforcement procedures; and

30 (11) Any other rules necessary to effectuate the purposes of this article.

31 (b) The rules proposed for promulgation pursuant to subsection (a) of this section shall  
32 establish the amount of any fee authorized pursuant to the provisions of this article: *Provided,*  
33 That in no event may the fees established for the issuance of certificates of operation exceed \$90.

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

40 (d) The division may enter into agreements with counties and municipalities whereby such  
41 counties and municipalities be permitted to retain the inspection fees collected to support the  
42 enforcement activities at the local level.

43 (e) The commissioner or his or her authorized representatives may consult with  
44 engineering authorities and organizations concerned with standard safety codes, rules and  
45 regulations governing the operation, maintenance, servicing, construction, alteration, installation  
46 and the qualifications which are adequate, reasonable and necessary for the elevator mechanic  
47 and inspector.

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

**§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 ~~Amounts collected which are found from time to time to exceed the funds needed for purposes~~  
5 ~~set forth in this article may be utilized by the commissioner as needed to meet the division's~~  
6 ~~funding obligations.~~

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

**ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

**§21-5-5c. License required for psychophysiological detection of deception examiners;  
qualifications; promulgation of rules governing administration of  
psychophysiological detection of deception examinations.**

1 (a) No person, firm or corporation shall administer a psychophysiological detection of  
2 deception examination, lie detector or other similar examination utilizing mechanical or electronic  
3 measures of physiological reactions to evaluate truthfulness without holding a current valid license  
4 to do so as issued by the Commissioner of Labor. No examination shall be administered by a  
5 licensed corporation except by an officer or employee thereof who is also licensed.

6 (b) A person is qualified to receive a license as an examiner if he or she:

7 (1) Is at least twenty-one years of age;

8 (2) Is a citizen of the United States;

9 (3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;

10 (4) Has not been released or discharged with other than honorable conditions from any of  
11 the armed services of the United States or that of any other nation;

12 (5) Has passed an examination conducted by the Commissioner of Labor or under his or  
13 her supervision to determine his or her competency to obtain a license to practice as an examiner;

14 (6) Has satisfactorily completed not less than six months of internship training; and

15 (7) Has met any other qualifications of education or training established by the  
16 Commissioner of Labor in his or her sole discretion which qualifications are to be at least as  
17 stringent as those recommended by the American Polygraph Association.

18 (c) The Commissioner of Labor may designate and administer any test he or she considers  
19 appropriate to those persons applying for a license to administer psychophysiological detection  
20 of deception, lie detector or similar examination. The test shall be designed to ensure that the  
21 applicant is thoroughly familiar with the code of ethics of the American Polygraph Association and  
22 has been trained in accordance with association rules. The test must also include a rigorous  
23 examination of the applicant's knowledge of and familiarity with all aspects of operating  
24 psychophysiological detection of deception equipment and administering psychophysiological  
25 detection of deception examinations.

26 (d) The license to administer psychophysiological detection of deception, lie detector or  
27 similar examinations to any person shall be issued for a period of one year. It may be reissued  
28 from year to year. The licenses to be issued are:

29 (1) "Class I license" which authorizes an individual to administer psychophysiological  
30 detection of deception examinations for all purposes which are permissible under the provisions  
31 of this article and other applicable laws and rules.



32 (2) "Class II license" which authorizes an individual who is a full-time employee of a law-  
33 enforcement agency to administer psychophysiological detection of deception examinations to its  
34 employees or prospective employees only.

35 (e) The Commissioner of Labor shall charge an annual fee to be established by legislative  
36 rule. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and  
37 deposited in an appropriated special revenue account hereby created in the State Treasury to be  
38 known as the Psychophysiological Examiners Fund and expended for the implementation and  
39 enforcement of this section. ~~Amounts collected which are found from time to time to exceed funds~~  
40 ~~needed for the purposes set forth in this section may be utilized by the commissioner as needed~~  
41 ~~to meet the division's funding obligations.~~ In addition to any other information required, an  
42 application for a license shall include the applicant's Social Security number.

43 (f) The Commissioner of Labor shall propose rules for legislative approval in accordance  
44 with ~~article three, chapter twenty-nine-a~~ §29A-3-1 et seq. of this code governing the administration  
45 of psychophysiological detection of deception, lie detector or similar examination to any person:  
46 *Provided*, That all applicable rules in effect on the effective date of ~~sections five-a, five-b, five-c~~  
47 ~~and five-d of this article~~ §21-5-5a, §21-5-5b, §21-5-5c and §21-5-5d of this code will remain in  
48 effect until amended, withdrawn, revoked, repealed or replaced. The legislative rules shall include:

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

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

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

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

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

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

62 (7) Any other purpose to carry out the requirements of ~~sections five-a, five-b, five-c and~~  
63 ~~five-d of this article~~ §21-5-5a, §21-5-5b, §21-5-5c and §21-5-5d of this code.

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

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

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

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

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

11 (1) For manufacturers, \$300;

12 (2) For dealers, \$100;

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

14 (4) For contractors, \$50: *Provided*, That if a contractor has met the licensing requirements  
15 of this article and the West Virginia Contractor Licensing Act in ~~article eleven of this chapter~~ §21-

16 11-1 et seq. of this code, has paid the annual license fee under ~~section eight of said article~~ §21-  
17 11-8 of this code and has furnished bond or other assurance or fee under ~~section ten of this article~~  
18 §21-9-10 of this code, he or she shall not be required to pay the annual license fee set forth in  
19 this section.

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

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

24 (f) Pursuant to such rules and regulations as may be promulgated by the board, the board  
25 may deny the issuance of a license or revoke or suspend any license.

26 (g) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and  
27 deposited in an appropriated special revenue account in the State Treasury to be known as the  
28 State Manufactured Housing Administration Fund. Expenditures from the fund shall be for the  
29 administration and enforcement of this article. ~~Amounts collected which are found from time to~~  
30 ~~time to exceed funds needed for the purposes set forth in this article may be utilized by the~~  
31 ~~commissioner as needed to meet the division's funding obligations.~~

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

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

1 (a) The division shall charge inspection and permit fees. The annual permit fee is \$100 for  
2 each ride or attraction. The annual inspection fee, if an inspection is to be done by the division, is  
3 \$100 for each ride or attraction. The annual inspection fee, if an inspection is to be done by the  
4 division, is due at the time of application for the annual permit. The division shall waive the  
5 inspection fee for any ride or attraction whose owner provides proof of nonprofit business status  
6 or for any ride or attraction whose owner provides proof that an inspection has been completed  
7 within the last year by a certified special inspector as provided in ~~section six of this article~~ §21-10-  
8 6 of this code.

9 (b) The division may charge additional inspection fees equal to the annual inspection fee  
10 for additional inspections required as the result of the condemnation of a device for safety  
11 standards violations and for inspections required as a result of accidents involving serious or fatal  
12 injury. If any owner or operator requires an inspection as the result of a violation of the permitting  
13 requirements of ~~section six of this article~~ §21-10-6 of this code, the division shall charge the owner  
14 or operator \$75 per hour in addition to the established inspection fee, including travel time.

15 (c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and  
16 deposited in an appropriated special revenue account in the State Treasury known as the  
17 Amusement Rides and Amusement Attractions Safety Fund and expended for the implementation  
18 and enforcement of this article. ~~Amounts collected which are found from time to time to exceed~~  
19 ~~funds needed for the purposes set forth in this article may be utilized by the commissioner as~~  
20 ~~needed to meet the division's funding obligations.~~

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

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

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

### **§21-11-17. Recordkeeping; fees.**

1 (a) The division shall keep a record of all actions taken and account for moneys received.  
2 All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in  
3 an appropriated special revenue account in the State Treasury to be known as the West Virginia  
4 Contractor Licensing Board Fund and expended for the implementation and enforcement of this  
5 article. ~~Amounts collected which are found from time to time to exceed the funds needed for~~  
6 ~~purposes set forth in this article may be utilized by the commissioner as needed to meet the~~  
7 ~~division's funding obligations.~~

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

13 (c) (1) All investigations, complaints, reports, records, proceedings, and other information  
14 received by the commissioner and board and related to complaints made to the commissioner or  
15 board or investigations conducted by the commissioner or board pursuant to this article, including  
16 the identity of the complainant or respondent, shall be confidential and shall not be knowingly and  
17 improperly disclosed by any member or former member of the board, the commissioner or staff,  
18 except as follows:

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

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

29 (C) The commissioner or board may release any information relating to an investigation  
30 at any time if the release has been agreed to in writing by the respondent.

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

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

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

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

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

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

### **§21-14-9. Disposition of fees.**

1 All fees paid pursuant to this article shall be paid to the Commissioner of Labor and  
2 deposited in a special revenue account in the State Treasury to be known as the Plumbing Work  
3 Fund and expended for the implementation and enforcement of this article. ~~Amounts collected~~  
4 ~~which are found from time to time to exceed funds needed for the purposes set forth in this article~~  
5 ~~may be utilized by the commissioner as needed to meet the division's funding obligations.~~

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

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

1 (a) The division shall charge inspection and permit fees. The annual permit fee is \$100 for  
2 each zipline or canopy tour.

3 (1) The annual inspection fee, if an inspection is to be done by the division, is \$100 for  
4 each zipline or canopy tour.

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

7 (3) The division shall waive the inspection fee for a zipline or canopy tour whose operator  
8 provides proof of nonprofit business status or for any zipline or canopy tour whose operator  
9 provides proof that an inspection has been completed within the last year by a certified special  
10 inspector as provided in ~~section nine of this article~~ §21-15-9 of this code.

11 (b) The division may charge additional inspection fees equal to the annual inspection fee  
12 for additional inspections required as the result of the condemnation of a device for safety  
13 standards violations and for inspections required as a result of accidents involving serious or fatal  
14 injury. If any operator requires an inspection as the result of a violation of the permitting  
15 requirements of ~~section nine of this article~~ §21-15-9 of this code, the division shall charge the  
16 operator \$75 per hour in addition to the established inspection fee, including travel time.

17 (c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and  
18 deposited in an appropriated special revenue account in the State Treasury known as the  
19 Amusement Rides and Amusement Attractions Safety Fund and expended for the implementation  
20 and enforcement of this article. ~~Amounts collected which are found from time to time to exceed~~  
21 ~~funds needed for the purposes set forth in this article may be utilized by the commissioner as~~  
22 ~~needed to meet the division's funding obligations.~~

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

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

**§21-16-10. Disposition of fees.**

1 All fees paid pursuant to this article shall be paid to the Commissioner of Labor and  
2 deposited in an appropriated special revenue account hereby created in the State Treasury to be  
3 known as the HVAC Fund and expended for the implementation and enforcement of this article.  
4 ~~Amounts collected which are found from time to time to exceed funds needed for the purposes~~  
5 ~~set forth in this article may be utilized by the commissioner as needed to meet the division's~~  
6 ~~funding obligations.~~

**CHAPTER 47. REGULATION OF TRADE.**

**ARTICLE 1. WEIGHTS AND MEASURES.**

**§47-1-8. Requirements for the registration of service persons and service agencies for  
commercial weighing and measuring devices.**

1 (a) The uniform regulation for the voluntary registration of service persons and service  
2 agencies for commercial weighing and measuring devices as adopted by The National  
3 Conference of Weights and Measures and published in the National Institute of Standards and  
4 Technology Handbook 130, Uniform Laws and Regulations and supplements thereto or revisions  
5 thereof, shall apply to the registration of service persons and service agencies in the state, except  
6 insofar as modified or rejected by legislative rule.

7 (b) Beginning January 1, 2018, the commissioner shall charge an annual registration fee  
8 for service persons and service agencies to be established by legislative rule: Provided, That  
9 upon the effective date of the amendments to this section adopted in the 2018 Regular Session  
10 of the Legislature, the division may not charge an annual device registration fee. The  
11 ~~commissioner may file an emergency rule prior to January 1, 2018, to implement and administer~~  
12 ~~the amendments made to this section during the 2017 regular session. The commissioner may~~



13 ~~also propose rules for legislative approval, in accordance with article three, chapter twenty-nine-~~  
14 ~~a of this code for the implementation and enforcement of this section.~~

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

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

1 (a) The commissioner shall operate and maintain a state measurement laboratory certified  
2 and approved by the National Institute of Standards and Technology. The laboratory shall be used  
3 to both house and maintain the state primary standards and secondary standards as traceable to  
4 the national standards and to test or calibrate any secondary or working standards which are  
5 submitted for test as required by this article.

6 (b) The commissioner shall promulgate rules, pursuant to ~~chapter twenty-nine-a~~ §29A-1-  
7 1 et seq. of this code to assess fees for weights and measures, laboratory calibration, and testing.  
8 All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited  
9 into an appropriated special revenue account in the State Treasury to be known as the Weights  
10 and Measures Fund and expended for the implementation and enforcement of this article.  
11 ~~Amounts collected which are found from time to time to exceed the funds needed for the purposes~~  
12 ~~set forth in this article may be utilized by the commissioner as needed to meet the division's~~  
13 ~~funding obligations.~~

14 (c) The commissioner shall provide such personnel as required to operate the laboratory  
15 in a manner which is consistent with the needs of this article. Personnel shall be trained and  
16 certified to perform all such calibrations and tests as required by the National Institute of  
17 Standards and Technology to maintain traceability of the state standards to national standards,

18 and to properly maintain the laboratory facility as certified and traceable to the National Institute  
19 of Standards and Technology.

**§47-1-21. Registration of business.**

1 (a) On or before October 1, 1994, every commercial business in the state which, in the  
2 course of conducting business, utilizes weights, measures, and weighing and measuring devices  
3 covered by this article shall obtain a certificate of device registration for the commercial devices  
4 covered by this article, from the division. After October 1, 1994, it shall be unlawful in the state to  
5 conduct business subject to the provisions of this article without having first obtained a certificate  
6 of device registration from the division. Application for a certificate of device registration shall be  
7 made on a form provided by the division.

8 (b) A certificate of device registration is valid for 12 months from the date of issue. The  
9 certificate of device registration shall be posted within the place of business.

10 (c) Application for the renewal of a certificate of device registration shall be made on a  
11 form provided by the division at least 30 days prior to the renewal due date. The commissioner  
12 may deny the renewal of device registration for cause where the cause is the result of the  
13 conviction of the applicant, in a court of competent jurisdiction, for a violation of this article.

14 (d) Beginning January 1, 2018, the division shall charge an annual device registration fee,  
15 to be established by legislative rule: Provided, That upon the effective date of the amendments to  
16 this section adopted in the 2018 Regular Session of the Legislature, the division may not charge  
17 an annual device registration fee. ~~The commissioner may file an emergency rule prior to January~~  
18 ~~1, 2018, to implement and administer the amendments made to this section during the 2017~~  
19 ~~regular session. The commissioner may also propose rules for legislative approval, in accordance~~  
20 ~~with article three, chapter twenty-nine-a of this code for the implementation and enforcement of~~  
21 ~~this section.~~

22 (e) All fees paid pursuant to this section shall be paid to the Commissioner of Labor and  
23 deposited in the Weights and Measures Fund for use by the commissioner for the implementation

24 and enforcement of this article. ~~Amounts collected which are found from time to time to exceed~~  
25 ~~funds needed for the purposes set forth in this article may be utilized by the commissioner as~~  
26 ~~needed to meet the division's funding obligations.~~

**§47-1-22. Civil penalties.**

1 (a) No person may:

2 (1) Use or have in possession for use in commerce any incorrect weight or measure;

3 (2) Sell or offer for sale for use in commerce any incorrect weight or measure;

4 (3) Remove any tag, seal, or mark from any weight or measure, without specific  
5 authorization from the Weights and Measures Section; or

6 (4) Violate any provisions of this article or rules promulgated under it, not defined in  
7 ~~subsection (a), section twenty-three of this article~~ §47-1-23(a) of this code.

8 (b) Any person who violates subsection (a) of this section or any rule promulgated by the  
9 commissioner may be assessed a civil penalty by the commissioner, which penalty may not be  
10 more than \$1,000 for each violation. Each violation shall constitute a separate offense. In  
11 determining the amount of the penalty, the commissioner shall consider the person's history of  
12 previous violations, the appropriateness of such penalty to the size of the business of the person  
13 charged, the gravity of the violation and the demonstrated good faith of the person charged in  
14 attempting to achieve rapid compliance after notification of a violation.

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

20 (d) A civil penalty may be assessed by the commissioner only after the commissioner has  
21 given at least ten days' notice to the person. Notice shall be in writing, shall contain a short, plain  
22 statement of the matter asserted and shall designate a time and place for a hearing where the

23 person may show cause why the civil penalty should not be imposed. Notice of hearing shall be  
24 sent by certified mail. The person may, at the time designated for the hearing, produce evidence  
25 on his or her behalf and be represented by † counsel.

26 (e) Any person aggrieved by a decision of the commissioner has the right to a contested  
27 case hearing under ~~article five, chapter twenty-nine-a of this code, §29A-5-1 et seq. of this code.~~

**ARTICLE 1A. REGULATION AND CONTROL OF BEDDING AND UPHOLSTERY  
BUSINESSES.**

**§47-1A-14. Annual registration and permit fees.**

1 (a) The annual registration fee for all manufacturers shipping or selling articles of bedding  
2 and for upholsterers, or renovators, as defined in this article, in the State of West Virginia shall be  
3 \$90, payable on the first day of the fiscal year. Any manufacturer, upholsterer, or renovator who  
4 submits an annual registration fee on or after July 16, shall pay a \$25 late fee in addition to the  
5 annual fee.

6 (b) The annual sterilizer permit fee shall be \$90, payable on the first day of the fiscal year.  
7 Any sterilizer who submits an annual permit fee on or after July 16, shall pay a \$25 late fee in  
8 addition to the annual fee.

9 (c) The fee for reissuing a revoked or expired registration or permit shall be \$90.

10 (d) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and  
11 deposited in an appropriated special revenue account hereby created in the State Treasury to be  
12 known as the Bedding and Upholstery Fund and expended for the implementation and  
13 enforcement of this article. ~~Amounts collected which are found from time to time to exceed funds  
14 needed for the purposes set forth in this article may be utilized by the commissioner as needed  
15 to meet the division's funding obligations.~~