

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2805

By Delegate Worrell

[Introduced January 19, 2023; Referred to the
Committee on Government Organization]

1 A BILL to repeal §21-3C-14 of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §21-3D-1, §21-3D-2, §21-3D-3, and §21-3D-8 of said code; to amend said code by
3 adding thereto five new sections, designated, §21-3D-4, §21-3D-5, §21-3D-6, §21-3D-7;
4 and §21-3D-9; to amend and reenact §21-14-2, and §21-14-7 of said code; to amend and
5 reenact §21-16-2, §21-16-3, §21-16-5, and §21-16-8 of said code; to repeal §21-16-11 of
6 said code; to amend and reenact §29-3B-2, §29-3B-3, §29-3B-4, §29-3B-6, and §29-3B-8
7 of said code; and to amend and reenact §29-3D-2, §29-3D-3, §29-3D-4, and §29-3D-7 of
8 said code, all relating to licensure in this state; providing for local ordinances over state
9 code precedence; modifying the national standard and national certification for crane
10 operators; removing the legislative appropriation of the Crane Operators Certification
11 Fund; modifying the definitions of a Journeyman and Master plumber; removing monetary
12 penalties for performing plumbing work under certain conditions; providing for altered
13 definitions of HVAC Technician; removing the requirement that an applicant for a HVAC
14 technician license must provide documentation of up to 2,000 hours work, training, and
15 experience; removing monetary penalties for improperly performing HVAC work under
16 certain conditions; modifying eligibility for HVAC technician licensure; providing for altered
17 definitions of Journeyman and Master electricians; removing exemptions for licensure
18 under certain conditions; modifying time frames for electricians to renew a license without
19 retesting; removing monetary penalties for performing electrical work under certain
20 conditions; providing for definitions of fire protection workers; providing for an altered
21 definition of Journeyman sprinkler fitter; modifying an exemption from licensure when
22 meeting certain conditions; removing monetary penalties for certain fire protection work;
23 and providing for other minor technical changes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

21 which ensures, or tends to ensure that learning has occurred and that the objectives of the training
 22 have been realized. The commissioner will evaluate whether the approved training adequately
 23 demonstrates competency to safely operate cranes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~On January 1, 2022, and thereafter, a political subdivision of this state may not require, as~~
 2 ~~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, to have any other~~
 4 ~~license or other evidence of competence as a crane operator~~

5 (a) The commissioner shall:

6 (1) Propose rules for legislative approval in accordance with the provisions §29A-3-1 et
 7 seq. of this code, which rules at the minimum must include provisions for:

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

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

14 (C) Certification categories including lattice boom truck cranes; lattice boom crawler
 15 cranes; fixed cab-telescoping boom cranes; swing cab-telescoping boom cranes; and tower

16 cranes: *Provided*, That the holders of a certification for the large telescoping boom crane, upon
17 application for recertification, will be provided with a one time election to either be certified as an
18 operator of a fixed-cab or swing-cab telescoping boom crane, and that holders of a certification for
19 the small telescoping boom crane, upon application for recertification, will be automatically
20 certified as a fixed cab operator;

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

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

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

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

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

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

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

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

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

41 (b) The commissioner, or his or her designee, upon receipt of information that a person has

42 engaged in or is engaging in an act that constitutes a violation of this article, may issue a notice to
43 the person to cease and desist and may apply to the circuit court for an order enjoining the act.
44 Upon a showing that the person has engaged in or is engaging in an act that constitutes a violation
45 of this article, the court may order an injunction, restraining order or other order as the court
46 considers _____ appropriate.

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

- 1 (a) The commissioner shall certify an applicant who:
2 (1) Is at least 18 years of age;
3 (2) Meets the application requirements as prescribed by rule;
4 (3) Passes the written examination;
5 (4) Passes the practical demonstration: *Provided*, That the practical demonstration
6 approved by the commissioner may be administered on-site by a qualified company
7 representative;
8 (5) Presents the original, or a photographic copy, of a physician's certificate that he or she
9 is physically qualified to drive a commercial motor vehicle as required by 49 C.F.R. §391.41, as of
10 the effective date of this article or an equivalent physician's certificate as approved by the
11 commissioner; and
12 (6) Pays the appropriate fees.
13 (b) Certification issued under this article is valid throughout the state and is not assignable
14 or transferable, and is valid for one year from the date on which it was issued.
15 (c) Notwithstanding any other provision of this article to the contrary, the commissioner
16 shall establish a dual classification system of certification as follows:
17 (1) Class A certification, which will provide eligibility for national certification, and for which
18 the applicant must achieve a passing score of 70 on the national commission for the certification of
19 crane operators written examination;
20 (2) Class B certification, for which the commissioner may accept a lesser score on the

21 national commission for the certification of crane operators written examination: *Provided, That*
22 this score may not be less than 60 for Class B certification.

23 (d) On and after November 10, 2014:

24 (1) All individuals who operate cranes in the State of West Virginia which are governed by
25 the provisions of the Occupational Safety and Health Administration of the United States
26 Department of Labor, 29 C.F.R §1926.1400, Subpart CC, are required to hold a Class A
27 certification; and

28 (2) All individuals who operate cranes in the State of West Virginia which are not governed
29 by any provision of the Occupational Safety and Health Administration of the United States
30 Department of Labor are required to hold a Class B certification.

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

1 (a) The commissioner may deny, suspend, revoke, or reinstate certification.

2 (b) A violation of this article or rule adopted pursuant to this article is grounds for the denial,
3 suspension, revocation, or refusal to reinstate certification and permits the imposition of
4 disciplinary action: *Provided, That* no disciplinary action against a crane operator may be imposed
5 without a proper prior notice as served under §56-2-1 *et seq.* of this code, and an opportunity for
6 hearing held before the commissioner or his designee wherein the crane operator will be provided
7 the opportunity to present evidence in person, by counsel or both and after which, if the
8 commissioner finds a violation of this article has occurred, the commissioner may impose any
9 disciplinary action permitted in this article: *Provided, however, That* the provisions of subsection
10 (e) of section seven of this article have not been met.

11 (c) Operation of a crane in violation of this article or other provision of this code may result
12 in the suspension of certification for not less than 24 hours nor more than one year, or revocation of
13 certification until reinstated.

14 (d) Each certified crane operator shall carry proof of certification on his or her person
15 during operation of a crane.

16 (e) A person whose certification has been revoked may apply for certification one year after
17 the date of the revocation.

§21-3D-6. Effect of accident.

1 (a) The commissioner may suspend or revoke the certification of a person involved in an
2 accident relating to the operation of a crane by that person: *Provided*, That no disciplinary action
3 against a crane operator may be imposed without a proper prior notice as served under §56-2-1 *et*
4 *seq.* of this code, and hearing held before the commissioner or his or her designee wherein the
5 crane operator will be provided the opportunity to present evidence in person, by counsel or both
6 and after which, the commissioner finds a violation of this article has occurred, the commissioner
7 may impose any disciplinary action permitted in this article: *Provided, however*, That the
8 provisions of subsection (e) of section seven of this article have not been met.

9 (b) If the commissioner makes a finding that the accident was caused by the actions or
10 omissions of the certificate holder, the commissioner may require the certificate holder to retake
11 and pass the written certification examination, or practical demonstration or both the certification
12 examination and the practical demonstration or successfully completes a training course
13 approved by the commissioner before the certificate holder may apply to have the certification
14 reinstated.

§21-3D-7. Penalties.

1 (a) A person required to obtain certification under this article, who operates a crane or
2 tower crane without certification, is guilty of a misdemeanor and, upon conviction thereof, shall be
3 finned not less than \$50 nor more than \$500 for each violation.

4 (b) No person may knowingly or intentionally drive or operate a crane or tower crane while:

5 (1) Having any measurable alcohol in his or her system; or

6 (2) Under the influence of any controlled substance, as defined by §60A-1-101(d) of this
7 code; or

8 (3) Under the combined influence of alcohol and any controlled substance or any other

9 drug.

10 A person who violates this subsection is guilty of a misdemeanor and, upon conviction
11 thereof, shall be fined not less than \$100 nor more than \$1,000. In addition to the fine, the
12 Commissioner of Labor shall revoke the person's certification for not less than one year.

13 (c) An employer who knowingly employs, permits, or directs a person to operate a crane or
14 tower crane without proper certification is guilty of a misdemeanor and, upon conviction thereof,
15 shall be fined not less than \$100 nor more than \$1,000 for each violation.

16 (d) A person, operating a crane or tower crane, who fails to produce the certification within
17 24 hours after request of the commissioner or his or her authorized representative, is guilty of a
18 misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$100.

19 (e) If a person is convicted for an offense described in this section, and does not act to
20 appeal the conviction within the time periods as hereinafter described, then the person's
21 certification may be revoked or suspended in accordance with the provisions of this article, and,
22 further:

23 (1) The clerk of the court in which a person is convicted for an offense described in this
24 section shall forward to the commissioner a transcript of the judgment of conviction. If the
25 conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
26 transcript when the person convicted has not requested an appeal within 20 days of the
27 sentencing for such conviction. If the conviction is the judgment of a circuit court, the circuit clerk
28 shall forward the transcript when the person convicted has not filed a notice of intent to file a
29 petition for appeal or writ of error within 30 days after the judgment was entered; and

30 (2) If, upon examination of the transcript of the judgment of conviction, the commissioner
31 shall determine that the person was convicted for any of the offenses described in this section, the
32 commissioner shall make and enter an order revoking or suspending the person's certificate to
33 operate a crane or tower crane in this state. The order shall contain the reasons for the revocation
34 or suspension and the revocation or suspension periods provided by this article or by rule. Further,

35 the order shall give the procedures for requesting a hearing. The person shall be advised in the
 36 order that because of the receipt of a transcript of the judgment of conviction by the commissioner
 37 a presumption exists that the person named in the transcript of the judgment of conviction is the
 38 person named in the commissioner’s order and such constitutes sufficient evidence to support
 39 revocation or suspension and that the sole purpose for the hearing held under this section is for
 40 the person requesting the hearing to present evidence that he or she is not the person named in
 41 the transcript of the judgment of conviction. A copy of the order shall be forwarded to the person by
 42 registered or certified mail, return receipt requested. No revocation or suspension shall become
 43 effective until 10 days after receipt of a copy of the order; and

44 (3) The provisions of this subsection do not apply if an order reinstating the crane or tower
 45 crane operator’s certification of the person has been entered by the commissioner prior to the
 46 receipt of the transcript of the judgment of conviction; and

47 (4) For the purposes of this section, a person is convicted when the person enters a plea of
 48 guilty or is found guilty by a court or jury.

§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.~~ The commissioner may set reasonable application fees for the
 10 issuance or renewal of certificates and other services associated with crane operator certification.

§21-3D-9.

Reciprocity.

1 The commissioner, in his or her discretion, may grant certification to persons certified by
2 other states, without examination or without the required training upon satisfactory proof that the
3 qualifications for the applicants are equal to the qualifications of this state: *Provided*, That the other
4 states extend similar reciprocity privileges to persons certified by this state.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-2. Definitions.

1 As used in this article:

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

4 (b) "Journeyman plumber" means a person qualified by ~~passage of a Journeyman plumber~~
5 ~~written examination with a score of at least 70 percent~~ at least 8,000 hours of plumbing or related
6 experience and who is competent to instruct and supervise the work of other employees.

7 (c) "Master plumber" means a person ~~who has passed a Master plumber written~~
8 ~~examination with a score of at least 70 percent~~ with at least 12,000 hours of plumbing work
9 experience and who is competent to design plumbing systems, and to instruct and supervise the
10 plumbing work of Journeyman plumbers, and other employees. ~~*Provided*, That the Master~~
11 ~~plumber written examination may not be taken until one year after passage of the Journeyman~~
12 ~~plumber examination~~

13 (d) "Plumber in training" means a person ~~who has not passed the Journeyman plumber~~
14 ~~examination: *Provided*, That the fee for plumbers in training may not be higher than \$25.00~~ with
15 interest in and an aptitude for performing plumbing work but who alone is not capable of
16 performing plumbing work, and who has fewer than 8,000 hours of plumbing experience.

17 (e) "Plumbing" means the practice, materials and fixtures utilized within a building in the
18 installation, extension and alteration of all piping, fixtures, water treatment devices, plumbing
19 appliances and appurtenances, in connection with sanitary drainage or storm drainage facilities;
20 the plumbing venting systems; medical gas systems; fuel oil and gas piping for residential,

21 commercial and institutional facilities; backflow preventers; and public or private water supply
22 systems, as defined by the state building code.

23 (f) "Single family dwelling" means a building which is occupied as, or designed or intended
24 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 work
2 without a license issued by the Commissioner of Labor, is subject to a cease and desist order.

3 (b) Any person continuing to engage in plumbing work after the issuance of a cease and
4 desist order is guilty of a misdemeanor and, upon conviction thereof, is subject to the following
5 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, or
8 confinement in jail for not more than six months, or both fine and confinement;

9 (3) For the third and subsequent offenses, a fine of not less than \$1,000 nor more than
10 \$5,000, and confinement in jail for not less than 30 days nor more than one year.

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

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

19 (e) Any person adversely affected by an action of the Commissioner of Labor may appeal
20 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 heat,
9 but does not include a fireplace or wood-burning stove not incorporated into or used as a primary
10 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~~ interest in and an aptitude for performing installation,
30 maintenance, and repair work to a heating, ventilating, and cooling system as defined in this
31 article, but who alone is not capable or authorized to perform heating, ventilating, and cooling
32 system work unless directly supervised by a HVAC technician or an HVAC residential technician.
33 *Provided*, That the fee for HVAC technician in training license may not be higher than \$25.00

34 (g) "HVAC residential 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 residential technician.

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

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

44 (j) "Single family dwelling" means a building that is occupied as, or designed or intended for
45 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 other than examination requirements, ~~pursuant to §21-16-11 of this code~~ for a license
13 issued under this article. The commissioner shall expedite the issuance of a provisional license or
14 a license by endorsement or reciprocity under this article to an applicant who: has verified military
15 experience or holds a current license issued by another jurisdiction that has license requirements
16 that are substantially equivalent to the license requirements of this state.

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

19 (d) This article does not apply to:

20 (1) A person who personally performs work on a heating, ventilating, and cooling system in
21 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 the
3 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 of
13 this subsection subsequently lapses, the applicant is subject to all licensure requirements,
14 including the examination;

15 (3) Reciprocity provisions;

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

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

20 (6) Enforcement procedures; and

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

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

24 (1) Provisions for the granting of HVAC residential technician licenses without examination
25 to qualified applicants who present satisfactory evidence no later than December 31, 2019, of
26 having at least 2,000 hours of experience and/or training working on heating, ventilating, and

27 cooling systems: *Provided*, That if a license issued under the authority of this subsection
28 subsequently lapses, the applicant is subject to all licensure requirements, including the
29 examination;

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

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

§21-16-8.

Penalties.

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

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

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

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

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

13 (c) Each day after official notice is given, a person continues to perform, or an employer

14 continues to authorize a person to perform, and which is not exempt by the provisions of section
15 three of this article, heating, ventilating and cooling work, is a separate offense and punishable
16 accordingly.

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

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

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

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

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

1 [Repealed.]

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 need a license to perform such supervised~~
6 ~~work~~ and a copy of the license is posted on any job in which electrical work is being performed for
7 hire.

8 As used in this article:

3 who performs electrical work at any manufacturing plant or other industrial establishment as an
4 employee of the person, firm or corporation operating the plant or establishment; (3) a person who
5 performs electrical work while employed by an employer who engages in the business of selling
6 appliances at retail, so long as such electrical work is performed incident to the installation or
7 repair of appliances sold by the employer; (4) a person who, while employed by a public utility or its
8 affiliate, performs electrical work in connection with the furnishing of public utility service; or (5) any
9 government employee performing electrical work on government property.

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

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

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

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

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

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

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

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

27 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (c) The State Fire Marshal shall propose rules for legislative approval regarding
37 qualifications for testing, issuance of licenses, and renewal in accordance with the provisions of

38 §29A-3-1 *et seq.*, of this code.

39 (d) To the extent that other jurisdictions provide for the licensing of electricians, the State
 40 Fire Marshal ~~shall~~ may grant the same or equivalent classification of license without written
 41 examination upon satisfactory proof furnished to the State Fire Marshal that the qualifications of
 42 the applicant ~~demonstrate that the person can perform work safely and competently and is in good~~
 43 ~~standing with all other jurisdictions where he or she is licensed~~ are equal to the qualifications
 44 required by this article and upon payment of the required fee: *Provided*, That as a condition to
 45 reciprocity, the other jurisdictions must extend to licensed electricians of this state, the same or
 46 equivalent classification.

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

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

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

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

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

8 ~~than \$1,000 nor more than \$5,000.~~

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

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

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-2. Definitions.

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

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

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

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

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

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

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

14 "Fire protection damper technician" means a person certified to install, test, maintain, or
15 repair a damper.

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

20 "Fire protection layout technician" is an individual who has achieved National Institute for
21 Certification in Engineering Technologies (NICET) Level III, ~~or has achieved from the National Fire~~
22 ~~Protection Association a certification in Certified Water Based Systems Professional (CW BSP), or~~
23 ~~has passed an exam approved by the state Fire Marshal from the National Inspection Testing~~
24 ~~Certification (NITC) organization or higher certification as recognized by the state Fire Marshal,~~
25 and who has the knowledge, experience and skills necessary to lay out fire protection systems
26 based on engineering design documents.

27 "Fire protection system" means any fire protection suppression device or system
28 designed, installed, and maintained in accordance with the applicable National Fire Protection
29 Association (NFPA) codes and standards, but does not include public or private mobile fire
30 vehicles.

31 "Fire protection work" means the installation, alteration, extension, maintenance, or testing
32 of all piping, materials, and equipment inside a building, including the use of shop drawings
33 prepared by a fire protection layout technician, in connection with the discharge of water, other
34 special fluids, chemicals or gases and backflow preventers for fire protection for the express
35 purpose of extinguishing or controlling fire.

36 "Journeyman sprinkler fitter" means a person qualified by at least ~~2,000~~ 5,000 hours of
 37 work experience or a score of at least 70 percent on an NITC or other equivalent examination
 38 selected by the state Fire Marshal related to installing, adjusting, repairing, and dismantling fire
 39 protection systems and who is competent to instruct and supervise the fire protection work of a
 40 sprinkler fitter in training.

41 "License" means a valid and current license issued by the State Fire Marshal in
 42 accordance with the provisions of this article.

43 "Portable Fire Extinguisher Technician" means a person certified in accordance with NFPA
 44 10 to install, maintain, repair, and certify portable fire extinguishers as defined by NFPA 10.

45 "Preengineered Suppression Systems Installer" means a person certified by a
 46 manufacturer to install, alter, extend, maintain, layout lay out or repair an agent suppression
 47 system.

48 "Preengineered Suppression Systems Technician" means a person certified to maintain or
 49 repair an agent suppression system.

50 "Single family dwelling" means a building which is occupied as, or designed or intended for
 51 occupancy as, a single residence for one or more persons.

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

54 ~~"Sprinkler fitter in training" means a person with interest in and an aptitude for performing~~
 55 ~~fire protection work but who alone is not capable of performing such work, and who has fewer than~~
 56 ~~5,000 hours of experience installing, adjusting, repairing and dismantling fire protection systems~~

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

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

4 (b) On and after January 1, 2016, a person performing or offering to perform damper work

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

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

11 ~~(e)~~(d) This article does not apply to:

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

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

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

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

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

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

§29-3D-4. Rule-making authority.

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

3 provisions of this article, which shall provide:

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

9 (2) Provisions for the granting of licenses without examination, to applicants who present
10 satisfactory evidence of having the expertise required to perform fire protection work at the level of
11 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-7.

Penalties.

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

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

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

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

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

12 (3) For the third and subsequent offenses, a fine of not less than \$1,000 nor more than
13 \$5,000, and confinement in jail for not less than 30 days nor more than one year.

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

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

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

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

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

NOTE: The purpose of this bill is to alter requirements for licensure relating to elevator mechanics, crane operators, HVAC, electricians, and plumbers back to what existed in the code before repeal of certain sections.

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