

WEST VIRGINIA CODE

CHAPTER 21. LABOR

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

§21-16-1. Declaration of purpose.

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

§21-16-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) This article does not apply to:

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

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

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

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

§21-16-4. Scope of practice.

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

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

(c) Persons licensed under this article are subject to the applicable provisions of the Contractor Licensing Act in article eleven of this chapter in the performance of work authorized by this article.

§21-16-5. Rule-making authority.

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

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

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

(3) Reciprocity provisions;

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

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

(6) Enforcement procedures; and

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

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

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

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

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

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

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

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

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

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

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

§21-16-8. Penalties.

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

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

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

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

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

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

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

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

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

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

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

On and after January 1, 2016, a political subdivision of this state may not require, as a condition precedent to the performance of work on heating, ventilating and cooling in the political subdivision, a person who holds a valid and current license issued under this article, to have any other license or other evidence of competence beyond those required by the Commissioner of Labor to perform work on heating, ventilating and cooling systems.

§21-16-10. Disposition of fees.

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

[Passed March 6, 2014; in effect ninety days from passage] Effective Date: June 4, 2014