

## **Chapter 29, Article 3D – Supervision of Fire Protection Workers**

### **§29-3D-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 fire protection work and damper work through licensure by the State Fire Marshal.

### **§29-3D-2. Definitions.**

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

- (a) "Combination Fire/Smoke Damper" means a device that meets both fire damper and smoke damper requirements.
- (b) "Damper" means a fire damper, smoke damper or combination fire/smoke damper.
- (c) "Damper work" means to install, test, maintain or repair a damper.
- (d) "Engineered Suppression Systems Installer" means a person certified by a manufacturer to install, alter, extend, maintain, layout or repair an agent suppression system.
- (e) "Engineered Suppression Systems Technician" means a person certified by a manufacturer to maintain or repair an agent suppression system.
- (f) "Fire damper" means a device installed in an air distribution system, designed to close automatically upon detection of heat, to interrupt migratory airflow and to restrict the passage of flame. Fire dampers are classified for use in either static systems or for dynamic systems, where the dampers are rated for closure under airflow.
- (g) "Fire protection damper technician" means a person certified to install, test, maintain or repair a damper.
- (h) "Fire protection damper technician in training" means a person with interest in and an aptitude for performing installation, maintenance or repair work to a damper as defined in this article, but who alone is not capable or authorized to perform damper work unless directly supervised by a Fire Protection Damper Technician.
- (i) "Fire protection layout technician" is an individual who has achieved National Institute for Certification in Engineering Technologies (NICET) Level III or higher certification, and who has the knowledge, experience and skills necessary to layout fire protection systems based on engineering design documents.
- (j) "Fire protection system" means any fire protection suppression device or system designed, installed and maintained in accordance with the applicable National Fire Protection Association (NFPA) codes and standards, but does not include public or private mobile fire vehicles.

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

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

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

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

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

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

(q) "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.

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

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

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

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

(b) On and after January 1, 2016, a person performing or offering to perform damper work in this state shall have a license issued by the State Fire Marshal, in accordance with the provisions of this article and the legislative rules promulgated pursuant hereto: Provided, That a person may not be licensed to perform damper work in this state without first being licensed as a HVAC technician pursuant to the provisions of article sixteen, chapter twenty-one of this code.

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

(d) This article does not apply to:

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

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

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

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

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

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

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

The State Fire Marshal 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, including classifications of licenses as defined in this article, applications, examinations and qualifications: Provided, That the rules shall require a person to be licensed as a HVAC technician or HVAC technician in training pursuant to article sixteen, chapter twenty-one of this code and the rules promulgated pursuant thereto, before being granted a license to perform damper work pursuant to this article;

(2) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform fire protection work at the level of the classifications defined in this article and who apply for licensure on or before July 1, 2009: 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) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform damper work at the level of the classifications defined in this article and who apply for licensure on or before July 1, 2016: 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;

(4) Reciprocity provisions;

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

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

(7) Enforcement procedures; and

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

#### **§29-3D-5. Enforcement.**

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

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

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

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

(b) The State Fire Marshal 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 plumbing, fire protection work or damper 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.

**§29-3D-7. Penalties.**

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

(b) 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, damper work without a license issued by the State Fire Marshal, is subject to a citation.

(c) Any person continuing to engage in fire protection work or damper work after the issuance of a citation 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, or confinement in jail for not more than six months, or both;

(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 less than thirty days nor more than one year.

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

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

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

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

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

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

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

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

**§29-3D-9. Disposition of fees.**

All fees paid pursuant to the provisions of this article, shall be paid to the state Fire Marshal and deposited in a special revenue account with the state Treasurer for the use of the state Fire Marshal as provided in subsection (c), section twelve-b, article three of this chapter.