

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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2002 JUN -7 A 9:31

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code 21-3C-11

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 21

TITLE OF RULE BEING AMENDED: Elevator Safety Act

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 8, 2002 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Andrew A. Brown

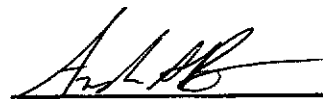
WV Division of Labor

Room B-709, Building #6

State Capitol Capitol Complex

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SCANNED

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Elevator Safety Act

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Labor

Address: Room B-709, Building #6

State Capitol Complex

Charleston, WV 25305

1. Effect of Proposed rule: No fiscal impact.

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	243,911	243,911	268,300
PERSONAL SERVICES	0	0	131,505	131,505	144,655
CURRENT EXPENSE	0	0	49,284	49,284	51,655
REPAIRS & ALTERATIONS	0	0	70	70	250
EQUIPMENT	0	0	259	259	250
OTHER	0	0	62,793	62,793	71,397

2. Explanation of Above Estimates: The above estimates reflect the current budget of the elevator safety program. A small increase in revenue is expected to offset by reduced inspection fees for small non-profit organizations.

3. Objectives of These Rules: This rule amendment is intended to bring the current rule into compliance with the provisions of House Bill 4046 which was passed into law during the 2002 regular Legislative session.

Rule Title: Elevator Safety Act

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

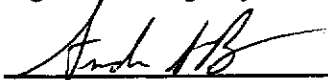
None

C. Economic Impact on Citizens/Public at Large.

None

Date: 6-7-02

Signature of Agency Head or Authorized Representative:



WEST VIRGINIA DIVISION OF LABOR

749-B Building 6 , Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-3797

[HTTP://WWW.STATE.WV.US/LABOR](http://www.state.wv.us/labor)

BOB WISE
Governor



JAMES R. LEWIS
Commissioner

FACTS AND CIRCUMSTANCES

During the 2002 regular session of the WV Legislature, House Bill 4046 was passed into law. This bill amended the Elevator Safety Act, [WV Code §21-3C et seq.] by adding an acceptance inspection requirement for all newly installed devices and provided certain other clean-up language. This rule modification is necessary as a result of passage of House Bill 4046.

Special Consideration- During the debate of House Bill 4046, there was consideration given to eliminating the inspection fee for private, non-profit organizations. After much debate on the issue, it was decided that such an exemption would not only significantly reduce the inspection program's revenue/budget , but would provide exemption to many organizations which simply should not be exempted. The Code provides that the Commissioner of labor shall set the fee for inspections and therefore, would have the authority to grant fee reductions when circumstances so justified. The agreement was made whereby the commissioner would, by legislative rule, provide for reduced inspection fees when the elevator owner could provide sufficient evidence of the their inability to pay.

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Summary of Changes

§42-21-3. Definitions. Two new definitions were added as a result of the passage of H.B. 4046 and existing subsections were renumbered.

3.1. "Certificate of acceptance" relates to the new requirement that all newly installed elevators be inspected prior to usage.

3.2. "Certificate of competency" relates to the certification of elevator inspectors.

3.7. The definition of "inspector" has been modified to include any individual who holds a certificate of competency issued by the commissioner. Previously, this definition was limited to government employees so certified. This change will permit sub-contracting inspections to the private sector.

§42-21-5. Certificate of Operation Required. This section requires a certificate of operation, issued after inspection, for all elevators. The section also provides an inspection exemption for the elevator during the first five years of operation. H.B. 4046 continues this exemption but only after the elevator has successfully completed an acceptance inspection prior to usage.

§42-21-6. Inspection.

6.2. Safety Standards. This rule originally adopted the American National Standards Institute (ANSI) Code A17.1, "Safety Code for Elevators and Escalators" as the state's inspection standard. As originally adopted, this code covered all passenger lifting devices. Recently, the Institute separated out the code for platform lifts and stairway chair-lifts into a new standard, A18.1. This rule modification seeks to adopt that new standard.

6.3. Inspection Report. The existing rule requires that a copy of the inspection report be forwarded to the county or city where the elevator is located. Many counties and cities have no inspection process and thus, no need for this report. The modification to this subsection seeks to make the report available rather than require that it be forwarded.

6.5. Special Inspection Fees. This subject is new to this rule. Several small non-profit organizations have requested inspection fee reductions or exemptions because of their inability to pay. The Code authorizes the commissioner to set the inspection fee. During the debate of House Bill 4046, several legislators requested a reduced fee for these small organizations. However, the committees were unable to reach agreement on acceptable language. The decision was made to permit the commissioner to investigate the situation and propose, by rule, a procedure to provide for reduced fees.

The remaining subsections are renumbered.

§42-21-7. Competency of Inspectors. This section sets the criteria for the certification of elevator inspectors. The current rule requires that the applicant be examined by the division for competency. However, the ANSI code adopted in subsection 3.3 of this rule, requires ANSI Qualified Elevator Inspector (QEI) certification. Therefore, this modification seeks to remove the state level examination and accept the ANSI QEI examination process. It should be noted that the state examination was identical to the ANSI examination. This modification seeks to eliminate that duplication.

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

SERIES 21
ELEVATOR SAFETY ACT

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§42-21-1. General.

1.1. Scope. -- This legislative rule governs competency ~~testing~~ of inspectors, certification of inspectors, registration of elevators, inspection of elevators, issuance of Certificate of operation, fees, permits for repair, enforcement and penalties.

1.2. Authority. -- W. Va. Code 21-3C-11.

1.3. Filing Date. -- ~~April 8, 1994~~

1.4. Effective Date. -- ~~June 1, 1994~~

§42-21-2. Application and Enforcement.

2.1. Application. This legislative rule governs all persons, firms, corporations, government entities, materials and transactions covered by the provisions of W. Va. Code §21-3C-1, et seq.

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia Division of Labor or its designated representatives as authorized by W. Va. Code §21-3C-11(d).

§42-21-3. Definitions.

3.1. "Certificate of acceptance" means a certificate issued by the division of labor certifying that a newly installed elevator has been inspected and was found to be installed in compliance with the safety standards set forth in the American National Standards Institute (ANSI) Code A17.1, "Safety Code for Elevators" and ANSI Code A18.1, "Safety Code for Platform Lifts and Stairway Chair-lifts".

3.2. "Certificate of competency" means a certificate issued by the division of labor certifying that an individual is qualified to inspect elevators.

~~3.1.~~ 3.3. "Certificate of operation" means a certificate issued by the Division of labor certifying than an elevator has been inspected and deemed safe for operation, thus authorizing its operation. The "certificate of operation" shall be conspicuously posted on the elevator at all times.

~~3.2.~~ 3.4. "Division" means the Division of Labor.

~~3.3.~~ 3.5. "Elevator" means all the machinery, construction, apparatus and equipment used in raising and lowering a car, cage or platform vertically between permanent rails or guides and includes all elevators,

power dumbwaiters, escalators, gravity elevators and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, man-lifts or the platform type with a platform area not exceeding nine hundred square inches, construction hoists or other similar temporary lifting or lowering apparatus.

~~3.4.~~ 3.6. "Freight elevator" means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride.

~~3.5.~~ 3.7. "Inspector" means a person ~~hired by the division, a county or municipality who has successfully completed the required West Virginia state elevator inspector examination~~ who holds a certificate of competency issued by the West Virginia Division of Labor and is thereby qualified to conduct safety inspections on elevators.

~~3.6.~~ 3.8. "Passenger elevator" means an elevator that is designed to carry persons to its contract capacity.

§42-21-4. Registration of Elevators.

4.1. Registration. The owner or operator of any elevator shall register with the Division every elevator operated by him or her, providing all information required by the Division. The registration shall be made on a form designed and furnished by the Division. The division shall forward a list of registered elevators to the county or municipality in which the elevators are located.

4.2. Exemptions. The registration requirement is not applicable to elevators located within any single-family residential dwelling. Also, the requirement is not applicable to elevators or similar devices used by mining or industrial operations where the elevators are not available to the general public and are covered by employee safety and health enforcement activities of the Occupational Safety and Health Administration and the Mining Safety and Health Administration, both agencies of the U.S. Department of Labor.

§42-21-5. Certificate of Operation Required.

5.1. Certificate of operation. No elevator may be operated in this state, except those exempted by section 4.2 of this rule, without a valid certificate of operation. No certificate of operation shall be issued by the Division until the elevator has been inspected and certified safe for operation by an inspector who holds a certificate of competency issued by the Division. The fee for a certificate of operation is twenty-five dollars (\$25) for an initial certificate and twenty-five dollars (\$25) for each subsequent renewal. The fee shall be paid directly to the Division. A certificate of operation is valid for twelve (12) months from the date of issue. The owner or operator of an elevator shall apply for a certificate of operation on a form provided by the Division and shall remit the appropriate fee. Provided that; newly installed elevators which have successfully completed an acceptance inspection, elevators which have been in use for less than five years from their initial installation date, are required to be issued a certificate of operation but are not required to be inspected to have the routine annual inspection for the first five years of usage.

5.2. Renewal. Every certificate to operate shall be renewed on or before its expiration date. The renewal fee is twenty-five dollars (\$25). The owner or operator of the elevator shall apply for renewal on a form furnished by the Division and shall remit the appropriate renewal fee. The Division shall not issue a certificate of operation until the elevator has been inspected and found safe for operation by an inspector who holds a certificate of competency issued by the division. Provided; that elevators which have been in

service for less than five years from the date of initial installation and have successfully completed an acceptance inspection are not subject to inspection.

5.3. Revocation of a certificate to operate. A certificate to operate may be revoked by the Division for any of the following reasons:

- a. any condition which presents an immediate and serious safety hazard to passengers,
- b. the failure of an owner or operator to comply with any safety hazard abatement order issued by the Division,
- c. the violation of a barricade order issued by the Division or by an inspector certified for competency by the Division,
- d. the submission of any information or statements to the Division which are known by the person submitting the information to be false or misleading in a material respect,
- e. the failure or refusal by the owner or operator of an elevator to permit the Division or its inspectors access to or to copy records, or the failure to make required reports or to provide information, or the failure or refusal to permit entry or inspection as required by this rule, or
- f. the failure to pay any fee required by law or this rule.

§42-21-6. Inspection.

6.1. Inspection required. As required by Section 5.1 of this rule, elevators must be inspected for safety and certified safe for operation by an inspector who has been certified for competency by the Division. The Division and its certified inspectors or employees may enter into any establishment in which there is located an elevator covered by this rule for the purpose of inspecting the elevator for safety. The inspection may occur, announced or unannounced, at any time between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, or at such other reasonable times as considered necessary by the Division in the exercise of its duties.

6.2. Safety Standards. The American National Standards Institute (ANSI) Code A17.1, "Safety Code for Elevators and Escalators" and ANSI Code A18.1, "Safety Code for Platform Lifts and Stairway Chairlifts", is hereby incorporated by reference. This Code shall serve to regulate the safety of elevators and escalators in this state. Every passenger elevator shall be equipped, maintained and operated in accordance with the ANSI Code A17.1 and ANSI A18.1, even though the elevator may be exempted from the inspection process, as authorized by Section 5.1 of this rule.

6.3. Inspection Report. Every inspector shall prepare a report of inspection showing the exact condition of each elevator. The inspector shall leave a copy of the report at the elevator on the day of inspection. The inspector shall forward a copy of the report of inspection to the Division and make a copy of the report available to the county or municipality in which the elevator is located. If any elevator requires changes or repairs to make it safe to operate, the recommendations shall be contained in the report of inspection. A copy of the report as approved by the Division shall be submitted to the owner or operator of the elevator. Unless the findings in the report are appealed, the owner or operator of the elevator shall make the required changes or repairs before a certificate of operation is issued. The owner or operator of an elevator may appeal the

findings of a report of inspection by making application to the Division for a hearing. An application for a hearing must be filed within twenty (20) days of the receipt of the report of inspection. The Division shall conduct hearings in accordance with the requirements of W. Va. Code §29A-5-1, et seq, State Administrative Procedures Act-Contested Cases.

6.4. Inspection Fees. The fee for the inspection of an elevator is one hundred dollars (\$100) for any one inspection. Provided, That in buildings with more than one elevator, the fee is one hundred dollars (\$100) for the first elevator inspected and twenty- five dollars (\$25) for each additional elevator. In situations where changes and/or repairs are required prior to the issuance of a certificate of operation, no inspection fee will be charged for the first follow-up inspection. However, if subsequent follow-up inspections are required because of the failure to make proper repairs and/or changes, inspection fees shall be charged at the same level as for an original inspection for each subsequent follow-up inspection. The failure to pay the required inspection fee is sufficient grounds for the Division to withhold the issuance of a certificate of operation.

6.5. Special inspection fees. The commissioner may consider reduced inspection fees for the inspection of elevators owned and operated by private non-profit organization who demonstrates the inability to pay the normal fees as defined in subsection 6.4 of this rule. Reduced fees shall not be available for the inspection of elevators which have a lifting capacity of more than seven hundred fifty (750) pounds or which are available for public use more than twenty hours per week. Any person who desires reduced inspection fees must submit a written request to the commissioner. The written request must contain, at the minimum, the following:

- a. The reason for the request;
- b. A two year financial statement of the organization's activity showing revenues and expenditures which demonstrates the inability to pay normal inspection fees;
- c. A copy of the organization's official declaration of non-profit status such as IRS form 501(c), West Virginia Corporate Charter-Non-profit, West Virginia Business Registration denoting non-profit status, etc.

Under no circumstances shall the commissioner be compelled to reduce inspection fees.

~~6.5.~~ 6.6. Enforcement; defective machinery. The Division or inspectors have the authority to remove from service, any elevator which is found to be unsafe for passenger use.

a. Notice of unsafe condition. If, during the course of an inspection, the Division or inspector finds that a passenger elevator or any part of the elevator cannot be operated safely, the Division or inspector shall contact the owner or operator in writing stating the deficiencies and recommended repairs and/or changes. The Division or inspector shall post a notice upon the elevator prohibiting further use. The notice shall contain a statement that operators or passengers are subject to injury by the use of the elevator. Further, the notice shall describe the repairs and/or changes necessary to be made in order to secure safe operation, the date of the notice, and the name and signature of the inspector issuing the notice.

b. Condemnation. If an inspector finds a passenger elevator to be so unsafe that it presents imminent danger of death or physical injury, the inspector shall seal the elevator out of service and post a hazard notice on the elevator, as described in Section 6.6.a of this rule. The Division shall be notified immediately as to the location and condition of the elevator. Any passenger elevator, once sealed, may not be operated except for the purpose of making repairs as prescribed by the Division. To seal an elevator is

to render it mechanically inoperable and to erect a barricade sufficient to deter physical access to the elevator. No seal, notice or barricade placed on or around an elevator in accordance with the provisions of this rule may be removed, obstructed or in any way altered without the written consent of the Division.

6.6. Permits for removal or repair. Before any existing elevator is removed to a different location, the owner or operator shall submit an application of specifications to the Division on forms provided by the division. A copy of the complete installation plan shall be submitted with the application. Also, any proposed repairs or changes by the owner or operator of an elevator which alter the construction or classification, grade or rated lifting capacity of an elevator shall require a permit, except where the alterations are recommended in an inspection report prepared by an inspector. Upon approval of the application and installation plans, the Division shall issue a permit for the installation or repair of the elevator. No elevator being removed and re-installed or repaired may be operated until its completion, in accordance with the approved plans and specifications.

§42-21-7. Competency of Inspectors.

7.1. Certificate of Competency. No person may serve as a elevator inspector unless he or she ~~successfully completes the examination required by this rule and~~ holds a certificate of competency issued by the Division.

7.2. ~~Examination~~ Application required. Any person desiring to obtain a certificate of competency from the Division shall ~~make~~ submit a written application ~~apply to the Division for an examination. An application for examination shall be made in writing and~~ accompanied by a ten dollar (\$10) processing fee, upon a form designed and furnished by the Division. The applicant shall provide all information requested on the form and any failure to provide the information shall cause the application to be rejected. The applicant shall also submit ~~a letter from one or more of his or her previous employers concerning his or her character and experience. After review of the application by the Division, the applicant, if considered appropriate by the Division, shall be tested by means of a written examination. The examination shall address the construction, installation, operation, maintenance and repair of elevators and their accessories and shall have as its primary reference source the American National Standards Institute Code A17.1 1990, Safety Code for Elevators and Escalators, as adopted by Section 6.2 of this rule. The applicant must achieve a minimum score or seventy percent (70%) to be considered to have passed the examination. An applicant who fails to successfully complete an initial examination, may submit an application for a second examination, ninety (90) days or more after the initial examination. An application for a second examination must be accompanied by an ten dollar (\$10) fee. If an applicant fails to successfully complete the examination on the second trial, he or she may not submit an application for another examination for a period of one year after the second failure.~~ the following:

- a. A letter from one or more previous employers concerning his or her character and experience;
- b. Proof that the applicant is at least twenty-one years of age; and
- c. A copy of the applicant's Qualified Elevator Inspector (QEI) certificate as issued by the National Association of Elevator Safety Authorities International.

7.3. Suspension or revocation of certificates. A certificate of competency may be suspended or revoked by the Division if the inspector is found to be incompetent or untrustworthy. Any willfully submitted false statement contained in an inspection report is grounds for suspension of the certificate of competency.

§42-21-8. Powers and Duties of Counties and Municipalities.

8.1. Work-sharing agreements with the Division. The Division may enter into a work-sharing agreement with any county or municipality whereby the county or municipality would, under the supervision of the Division, assume the inspection and enforcement provisions of W. Va. Code §21-3C-1 et seq.. Under an agreement, the county or municipality will insure:

a. that all elevators covered under the provisions of W. Va. Code §21-3C-1 et seq. within the county or municipality are inspected annually for safety;

b. that no elevator covered by W. Va. Code §21-3C-1 et seq. shall be permitted to operate without having first obtained a certificate of operation from the Division;

c. that any inspector employed by the county or municipality is certified for competency by the Division as required by Section 7 of this rule;

d. that all inspections for safety are conducted in accordance with the provisions of this rule;

e. that reports on inspection be filed with the Division within five (5) days of the date of inspection;
and

f. that the county or municipality will comply with any written orders issued by the Division relative to revised inspection procedures or enforcement of W. Va. Code §21-3C-1 et seq.

The Division shall:

a. provide technical assistance to the county or municipal inspectors as may be necessary to insure adequate enforcement of the W. Va. Code §21-3C-1 et seq.;

b. provide supplies of all reporting/inspection forms as may be required by the Division;

c. permit the county or municipality to collect and retain fees for inspections as a means to support the enforcement effort at the local level. The fees collected shall not exceed those established by this rule;
and

d. provide direct supervision, where considered necessary by the Division, to county or municipal inspectors.

With the approval of the Division, counties and municipalities may combine their jurisdictions into a single work-sharing agreement.

8.2. Form of agreement. Work-sharing agreements executed under the provisions of this section shall be executed on a form provided by the Division and approved by the Office of the Attorney General.

§42-21-9. Penalties.

9.1. Any person who violates any provision of the W. Va. Code §21-3C, or any directive or order issued pursuant thereto is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) per day. Each day the violation continues constitutes a separate offense.

§42-21-10. Severability.

10.1. If any provision of this rule or its application to any person is held invalid, the invalidity shall not affect the provisions or application of this rule which can be given effect without the invalid provisions or application, and to this end the provisions of this rule are declared to be severable.