

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 28 11 59 AM '93

OFFICE OF 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 WV Code 21-3C

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 21

TITLE OF RULE BEING PROPOSED: Elevator Safety Act

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 29, 1993 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Division of Labor

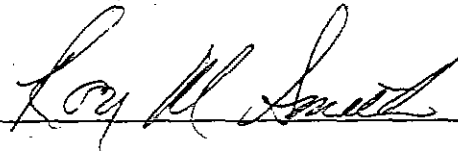
Office of the Commissioner

Room #319, Building #3

Capitol Complex

Charleston, WV 25305

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



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

4.60



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol, Room M-146
Charleston, West Virginia 25305-0310
Telephone: (304) 558-0400
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GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

June 25, 1993

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUN 28 11 59 AM '93

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Roy M. Smith, Commissioner
Department of Labor
Bldg. 3, Room 319
Charleston, WV 25305

Re: Proposed Rule - Title 42, Series 21 - Elevator Safety Act

Dear Commissioner Smith:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:ro

t:\elevsafe.rul

WEST VIRGINIA DIVISION OF LABOR

319 Building Three, Capitol Complex • Charleston, West Virginia 25305

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

GASTON CAPERTON
Governor



ROY M. SMITH
Commissioner

LEGISLATIVE RULE TITLE 42, SERIES 21 ELEVATOR SAFETY ACT

Purpose and Justification

During the 1993 Regular Session, the West Virginia Legislature passed House Bill 2184, Elevator Safety Act. Until passage of this Act, passenger elevators and escalators were not subject to any type of regulation relative to safe operations. This Act mandates the approval of installation plans for new units, the registration of all units operating in this state, annual inspections for compliance with safety code, the issuance of permits to operate, testing for competency of inspectors, civil penalties for violations, and the promulgation of Legislative rules. The enforcement of the Act is charged to the West Virginia Division of Labor. The Act was passed on April 23, 1993 and becomes effective ninety (90) days from said passage.

The purpose of this rule is to adopt standards for safety and to establish administrative procedures for application of the standards and enforcement. The promulgation of rules is mandated in the Act, §21-3C-6 and §21-3C-7. The standards for safety and inspection are incorporated by reference as American National Standards Institute (ANSI) A17.1, A17.2 and A17.3. These standards are used in part or in whole by all states where elevator/escalator safety is regulated. The decision to adopt this set of standards came at the recommendations of the enforcement chiefs in Kentucky, Maryland, New York, Virginia and Code representatives from the American National Standards Institute.

FISCAL NOTE FOR PROPOSED RULES

RULE TITLE: Title 42, Series 21 "Elevator Safety Act

TYPE OF RULE: Legislative

AGENCY: West Virginia Division of Labor

ADDRESS: Room #319, Building #3
 Capitol Complex
 Charleston, WV 25305

1. EFFECT OF PROPOSED RULE

| | Increase \$ | Decrease \$ | Current \$ | Next \$ | Thereafter \$ |
|----------------------------|----------------|----------------|---------------|------------|------------------|
| ESTIMATED TOTAL COST | 248,140 | -0- | 248,140 | 247,172 | 255,030 |
| PERSONAL SERVICES | 130,640 | -0- | 130,640 | 137,172 | 144,030 |
| CURRENT EXPENSE | 45,000 | -0- | 45,000 | 50,000 | 55,000 |
| REPAIRS AND ALTERATIONS | -0- | -0- | -0- | -0- | -0- |
| EQUIPMENT | 15,000 | -0- | 15,000 | 10,000 | 6,000 |
| OTHER | 57,500 | -0- | 57,500 | 50,000 | 50,000 |

2. EXPLANATION OF ABOVE ESTIMATES:

- a. Personal Services = salary and benefits for one (1) inspector supervisor, three (3) inspectors and one (1) clerk.
- b. Current Expense = travel and field operations for supervisor and inspectors.
- c. Equipment = basic test equipment for field operations and computer equipment for office.
- d. Other Costs = Attorney General's costs, printing, office rent and general office operational costs (supplies, etc.).

3. OBJECTIVES OF THIS RULE:

The purpose of this rule, as mandated by WV Code §21-3C, is to set administrative procedures, inspection standards and safety standards for the enforcement of the Act.

RULE TITLE: Title 42, Series 21 "Elevator Safety Act"

4. EXPLANATION OF OVERALL ECONOMIC IMPACT OF PROPOSED RULE.

A. Economic Impact on State Government.

Enforcement of the Act will be funded by a Special Revenue Account created by the collection of inspection and permit fees. This fund is expected to render the enforcement activity to be self-supporting and will require no appropriation of other state funds. The only cost to state government will be inspection and permit fees for elevators/escalators which are owned and or operated by state government.

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

The only impact in this category will be inspection and permit fees charged to the owners/operators of elevators and escalators. However, the Act does contain a provision which would permit counties and municipalities to enter into agreements with the Division whereby the county or municipality would perform the inspection of elevators and escalators within their jurisdiction. Under such an agreement, the county or municipality would be permitted to collect and retain the inspection fees to support its own inspection process.

C. Economic Impact on Citizens/Public at large.

No economic impact.

DATE: 6-28-93

Signature of Agency Head or Authorized Representative

Roy M. Smith

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JUN 28 11 59 AM '93

TITLE 42
LEGISLATIVE RULE
WEST VIRGINIA DIVISION OF LABOR

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 21

ELEVATOR SAFETY ACT

\$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.

1.2. Filing Date.

1.3. Effective Date.

\$42-21-2. Application and Enforcement.

2.1. Application. This legislative rule shall govern all persons, firms, corporations, government entities, materials and transactions covered by the provisions of West Virginia Code, Chapter Twenty-one, Article Three-C.

2.2. Enforcement. The enforcement of this legislative rule shall be 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 operation" means a certificate issued by the division of labor certifying that 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. "Division" means the division of labor.

3.3. "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, manlifts 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. "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. "Inspector" means a person hired by the division, a county or municipality who has successfully completed the required West Virginia state elevator inspector examination and is thereby qualified to conduct safety inspections on elevators.

3.6. "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. Such 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 wherein said elevators are located.

4.2. Exemptions. The registration requirement shall not be applicable to elevators located within any single-family residential dwelling. Also, the requirement shall not be applicable to elevators or similar devices used by mining or industrial operations where said 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 said 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 shall be 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 shall be valid for twelve (12) months from the date of issue. Application for a certificate of operation shall be made on a form provided by the

division and shall be accompanied by the appropriate fee. Provided that; elevators which have been in use for less than five years from their initial installation date, shall be required to be issued a certificate of operation but shall not be required to be inspected.

5.2. Renewal. Every certificate to operate shall be renewed on or before the its expiration date. The renewal fee shall be twenty-five dollars (\$25). An application for renewal shall be made on a form furnished by the division and shall be accompanied by the appropriate renewal fee. No certificate of operation shall be renewed 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 shall not be 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 such information to be false or misleading in a material respect,
- e. the failure or refusal to permit the division or its inspectors access to or copying 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, its certified inspectors or employees may enter into any establishment wherein there is located an elevator(s) covered by this rule for the purpose of inspecting elevators for safety. Such 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 A17.1-3, "Safety Code for Elevators and Escalators", is hereby incorporated by reference as a legislative rule. 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 A17.1-3, even though said 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 to the county or municipality wherein the elevator is located.

If any elevator requires changes or repairs to make it safe to operate, such 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 such 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. All hearings shall be conducted in accordance with the requirements of WV Code §29A-5, State Administrative Procedures Act-Contested Cases.

6.4. Inspection Fees. The fee for the inspection of an elevator shall be one hundred dollars (\$100) for any one inspection. Provided, however, That in buildings with more than one elevator, the fee shall be 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, there shall be no inspection fee charged for the first follow-up inspection. However, should subsequent follow-up inspections be 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 shall be sufficient grounds to withhold the issuance of a certificate of operation.

6.5. Enforcement; defective machinery. The division or inspector shall 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 thereof 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 such elevator prohibiting the 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, date of such notice, and the name and signature of the person 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, that elevator shall be sealed out of service and a hazard notice, as described in Section 6.5a of this rule posted on such elevator. The division shall be notified immediately as to the location and condition of such 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 such 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, an application of specifications shall be submitted 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 such alterations are recommended in an inspection report prepared by an inspector who holds a certificate of competency.

Upon approval of such application and installation plans, the division shall issue a permit for the installation or repair of such 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 required. Any person desiring to obtain a certificate of competency from the division shall make application to the division for an examination. An application for examination shall be made in writing, accompanied by a ten dollar (\$10) 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 such 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 deemed 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 of 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 a ten dollar (\$10) fee. Should an applicant fail to successfully complete the examination on the second trial, he or she shall not be permitted to submit an application for another examination for a period of one year after the second failure.

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 shall be 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 the Act. Under such an agreement, the county or municipality will insure:

- a. that all elevators covered under the provisions of the Act within said county or municipality are inspected annually for safety,
- b. that no elevator covered by the Act 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 shall be 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 the Act.

The division shall:

- a. provide technical assistance to the county or municipal inspectors as may be necessary to insure adequate enforcement of the Act,
- 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 deemed 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 Act, this rule 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 be held invalid, such 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.