

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

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

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB #1005

SECTION 64-3-7(j), PASSED ON March 16, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 1, 1994



Authorized Signature
Robert F. Miller
Deputy Commissioner

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

March 18, 1994

Andy Brown
Labor
Bldg. 3, Rm. 319
State Capitol Complex
Charleston, WV 25305

SB 1005 authorizing, **Title 42, Series 21, Elevator Safety Act**, passed the Legislature on **March 16, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 1005, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 1005** section **64-3-7(j)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

FILED

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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 governs all persons, firms, corporations, government entities, materials and transactions covered by the provisions of West Virginia 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 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, 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. "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. 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; 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.

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 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 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 A17.1-3, "Safety Code for Elevators and Escalators", 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 A17.1-3, 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 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 WV 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. 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 6.5a 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 required. Any person desiring to obtain a certificate of competency from the Division shall apply to the Division for an examination. An application for examination shall be made in writing and 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 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 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. 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.

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 West Virginia Code §21-3C-1 et seq.. Under an agreement, the county or municipality will insure:

- a. that all elevators covered under the provisions of West Virginia Code §21-3C-1 et seq within the county or municipality are inspected annually for safety;
- b. that no elevator covered by West Virginia 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 West Virginia 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 West Virginia 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 West Virginia 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.

SENATE BILL NO. 194

(By Senators Manchin, Anderson, Grubb, Macnaughtan
and Minard)

[Introduced January 31, 1994; referred to the
Committee on

LABOR;

Finance
Judiciary

A BILL to amend and reenact section seven, article three, chapter
sixty-four of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to authorizing the
division of labor to promulgate legislative rules relating to
the elevator safety act.

Be it enacted by the Legislature of West Virginia:

That section seven, article three, chapter sixty-four of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted, to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND
ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-3-7. Division of labor.

(a) The legislative rules filed in the state register on the
tenth day of May, one thousand nine hundred eighty-two, relating

1 to the commissioner of labor (steam boiler rules) as modified by
2 the legislative rule-making review committee are authorized.

3 (b) The legislative rules filed in the state register on the
4 seventh day of December, one thousand nine hundred eighty-three,
5 relating to the department of labor (hazardous chemical
6 substances), are authorized.

7 (c) The legislative rules filed in the state register on the
8 second day of February, one thousand nine hundred eighty-four,
9 relating to the department of labor (polygraph examinations), are
10 authorized.

11 (d) The legislative rules filed in the state register on the
12 twenty-second day of December, one thousand nine hundred
13 eighty-seven, relating to the commissioner of labor (West
14 Virginia occupational safety and health act), are authorized.

15 (e) The legislative rules filed in the state register on the
16 twenty-second day of December, one thousand nine hundred
17 eighty-seven, modified by the commissioner of labor to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the twentieth day of January,
20 one thousand nine hundred eighty-eight, relating to the
21 commissioner of labor (wage payment and collection act), are
22 authorized.

23 (f) The legislative rules filed in the state register on the
24 sixteenth day of November, one thousand nine hundred
25 eighty-seven, relating to the commissioner of the department of

1 labor (standards for weights and measures inspectors--adoption of
2 NBS Handbook 130, 1987), are authorized.

3 (g) The legislative rules filed in the state register on the
4 twelfth day of January, one thousand nine hundred eighty-eight,
5 relating to the commissioner of labor (steam boiler inspection
6 fee schedule), are authorized.

7 (h) The legislative rules filed in the state register on the
8 thirteenth day of September, one thousand nine hundred
9 eighty-eight, modified by the department of labor to meet the
10 objections of the legislative rule-making review committee and
11 refiled in the state register on the seventh day of December, one
12 thousand nine hundred eighty-eight, relating to the department of
13 labor (amusement rides and amusement attractions safety act), are
14 authorized.

15 (i) The legislative rules filed in the state register on the
16 sixteenth day of June, one thousand nine hundred eighty-nine,
17 modified by the department of labor to meet the objections of the
18 legislative rule-making review committee and refiled in the state
19 register on the first day of August, one thousand nine hundred
20 eighty-nine, relating to the department of labor (wage payment
21 and collection act), are authorized.

22 (j) The legislative rules filed in the state register on the
23 eleventh day of August, one thousand nine hundred ninety-three,
24 modified by the division of labor to meet the objections of the
25 legislative rule-making review committee and refiled in the state

1 register on the eighth day of October, one thousand nine hundred
2 ninety-three, relating to the division of labor (elevator safety
3 act), are authorized.

4

5 NOTE: The purpose of this bill is to authorize the Division
6 of Labor to promulgate legislative rules relating to the Elevator
7 Safety Act.

8

9 Strike-throughs indicate language that would be stricken from
10 the present law, and underscoring indicates new language that
11 would be added.

71 5 11

1 ----- H. B. 4276 -----
2 (By Delegates Gallagher, Douglas, Compton,
3 Huntwork, Burk and Faircloth
4 (Introduced January 31, 1994 ; referred to the
5 Committee on Government Organization then the
6 Judiciary)
7
8 -----
9

10 A BILL to amend and reenact section seven, article three, chapter
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14 the elevator safety act.

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16 That section seven, article three, chapter sixty-four of the
17 code of West Virginia, one thousand nine hundred thirty-one, as
18 amended, be amended and reenacted, to read as follows:

19 **ARTICLE 3. . . AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND**
20 **ENVIRONMENATL RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

21 §64-3-7. . . Division of labor.

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4276

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25 legislative rule-making review committee and refiled in the state

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6 of Labor to promulgate legislative rules relating to the Elevator
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KEN HECHLER
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Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

TO: Andy Brown

AGENCY: Labor

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 1, 1994

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 21 TITLE: 42 Labor

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Shelby B. Leary

TITLE OF PERSON SIGNING: Commissioner

DATE: 6-13-94

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.