

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #8

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OFFICE OF THE SECRETARY OF STATE
EDMUNDSON BUILDING
CHARLESTON, WV 25301

Effective Date

Feb. 14, 1992

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: WV Contractor Licensing Board TITLE NUMBER: 28

DATE EMERGENCY RULE WAS ORIGINALLY FILED: July 5, 1991

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

No

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

DATE OF FIRST EMERGENCY AMENDMENT: Oct. 4, 1991

SERIES NUMBER OF RULE: 2 TITLE OF RULE: West Virginia Contractor
Licensing Act

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS: To correct Title and Series number and to bring the emergency rule into conformity with the modification made by the Legislative Rule Making and Review Committee.

3.50
Use Additional Sheets If Necessary.

Lory M. Smith
Signature

TITLE 28
LEGISLATIVE RULES
WEST VIRGINIA CONTRACTOR LICENSING BOARD

Series 2

West Virginia Contractor Licensing Act; Creation of Board; Licensing; Fees; Examinations; Exemption; Cease and Desist Orders; Disciplinary Powers of Board; Administrative Hearings; and Severability.

Section 1. GENERAL.

1.1. Scope. This rule governs licensing, fees, examinations, powers of the Board, and penalties for violations in accordance with WV Code 21-11-1 et seq, and WV Code 29-5-1 et seq.

1.2. Authority. WV Code 21-11-5.

1.3. Filing Date. _____

1.4. Effective Date. _____

Section 2. APPLICATION AND ENFORCEMENT.

2.1. Application. This legislative rule applies to the Board and to all persons, materials and transactions governed by or otherwise within the jurisdiction of the Board.

2.2. Enforcement. The enforcement of these legislative rules is vested in the Board and the West Virginia Division of Labor.

Section 3. DEFINITIONS.

3.1. "Advertisement" means and includes the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, billboard, sign, placard, card, label, tag, window display, store sign, radio and/or television announcement, telephone directory or any other oral, visual or written means or method now or hereinafter employed to bring to the attention of the public the business of a contractor.

3.2. "Board" means the West Virginia Contractor Licensing Board.

3.3. "Capital improvements" means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real

Of property or any part thereof and that last, or are intended to be relatively permanent.

3.4. "Cease and desist order" means an order issued by the Commissioner pursuant to the provisions of WV Code 21-11-1 et seq, and of this Rule.

3.5. "Commissioner" means the commissioner of the West Virginia Division of Labor.

3.6. "Contractor" means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structure or works in connection therewith, where the cost of the undertaking is one thousand dollars or more for the material and labor involved. Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee.

Contractor or "contracting activity" also means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor or subcontractor) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, capital improvement or development of real property, or performing activity governed by any or all state building codes and the National Fire Protection Association Code and the National Electrical Code or its successor. The terms "contractor" and "contracting" are synonymous.

Contractor does not include:

- (1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;
- (2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;
- (3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work, except that such work, shall be considered to be

maintenance work only, and such work shall not materially add to the economic value of the property or asset.

(4) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in Section 3 of this rule and who employs full time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Employees of such corporation, partnership, or sole proprietorship shall also be exempt from the requirements of this rule.

3.7. "Construction project" means the entire undertaking for which the contractor(s) or subcontractor(s) is responsible.

3.8. "Division" means the West Virginia Division of Labor.

3.9. "Drywall (specialty) Contractor" means a contractor whose primary business is the installation of drywall, gypsum, wallboard panels and assemblies, and work incidental thereto. Also included is the preparation of surfaces for suitable painting or finishing including taping and texturing, installation of lightweight steel wall partitions and supporting members for gypsum drywall and the installation and repair of movable partitions for the application of gypsum drywall panels.

3.10. "Electrical Contractor" means a person who engages in the business of contracting to install, erect, repair or alter electrical equipment for the generation, transmission or utilization of electrical energy and work incidental thereto.

3.11. An "emergency basis" under West Virginia Code 21-11-6(c)(6) exists upon occurrence of an event, circumstance or situation which presents an imminent threat to persons or property constituting a serious health or safety hazard.

3.12. "Employee of a contractor" means any individual who works under the control and supervision of a contractor subject to this Rule for a wage and other benefits as required by law. An employee of a contractor is not a subcontractor.

3.13. "Excavation (specialty) Contractor" means a contractor whose primary business is the installation, alteration, and repair of earthen material by digging, trenching, grading, or compacting the material for a cut, fill, grade, or trench and work incidental thereto. Included in the scope of this definition is the installation, alteration, and repair of crib walls, gabion walls, and other devices not to exceed six (6) feet in height for the purpose of controlling the movement of earthen materials.

3.14. "General Building Contractor" means a person whose principal business is in connection with any structures built, being built or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole of any part of such construction. A general building contractor is considered to be a commercial, business or industrial contractor. A general building contractor who desires to perform electrical; plumbing; heating, ventilating and cooling; piping; or general engineering contracting work as defined in this rule; shall obtain a license in those classifications.

3.15. "General Engineering Contractor" means a person whose principal business is in connection with public or private works projects, including, but not limited to, one or more of the following: Irrigation, drainage and water supply projects; electrical generation projects; swimming pools; flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and sewage disposal systems; bridges; inland waterways; pipelines for transmission of petroleum and other liquid or gaseous substances; refineries; chemical plants and other industrial plants requiring a specialized engineering knowledge and skill; piers and foundations; and structures or work incidental thereto. "Swimming pools" means a public swimming pool as defined by the B.O.C.A. National Building Code/1990, Article 6, Section 623.2.A.

3.16. "Heating, Ventilating and Cooling Contractor" means a person who engages in the business of contracting to install, erect, repair, service or alter heating, ventilating and air conditioning equipment or systems to heat, cool or ventilate residential and commercial structures or work incidental thereto.

3.17. "Landscaping (specialty) Contractor" means a contractor whose primary business is preparation and alteration of land for horticulture and arboriculture and work incidental thereto. This definition includes irrigation systems and controls. Carpentry is limited to decorative fences and screens, planter boxes, and plant tubs common to the industry. Landscaping includes the installation of non-loadbearing slabs, walkways, and areas using concrete, brick, stone, or gravel and all other materials and equipment associated with the installation of such materials. Excluded are concrete slabs exceeding 400 square feet and concrete walkways exceeding 200 square feet in surface area. Excluded are retaining walls over three (3) feet in height, decorative walls or fences over six (6) feet in height, perimeter walls and fences, and load-bearing slabs and walkways.

3.18. "License" means a license to engage in business in this state as a contractor in one of the classifications set out in this rule.

3.19. "Masonry (specialty) Contractor" means a contractor whose primary business is the installation of brick, concrete block, stone, marble, slate or other units and products common to the masonry industry, with or without mortar and work incidental thereto. Also included is the installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging, cleaning, and welding of reinforcement steel related to masonry construction.

3.20. "Multifamily Contractor" means a person who is engaged in construction, repair or improvement of a multifamily residential structure or work incidental thereto. "Multifamily structures" means two or more residential units, as defined by this rule.

3.21. "Person" includes an individual, firm, sole proprietorship, partnership, corporation, association or other entity engaged in the undertaking of construction projects, or any combination thereof.

3.22. "Piping Contractor" means a person whose principal business is the installation of process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure vessels using joining methods of thread, weld, solvent weld or mechanical methods or work incidental thereto.

3.23. "Plumbing Contractor" means a person whose principal business is the installation, maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and plumbing appurtenances, venting systems and public or private water supply systems within or adjacent to any building or structure; included in this definition is installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot water piping in connection with building heating, piping for stand pipes or work incidental thereto.

3.24. "Posting of the license" means placing a copy of the contractor's license on each job site where contracting work is being performed by each contractor working at the job site location where the general public and inspecting agents of the Board can easily read each contractor's name, license number, license classification and license expiration date.

3.25. "Remodeling and Repair (specialty) Contractor" means a contractor whose primary business is all general remodeling, additions, and repairs to existing structures requiring the use of two or more unrelated trades and work incidental thereto where the cost of the undertaking does not exceed \$10,000.00. This includes all rough and finish general carpentry work including the installation of related hardware and accessories and all minor repairs and replacement of pre-manufactured items on existing structures.

3.26. "Residential Asphalt (specialty) Contractor" means a contractor whose primary business is to proportion, mix, and place base materials, and place paving and surfacing consisting of graded mineral aggregates bonded with asphalt or bituminous materials so that a firm smooth surface suitable for driveways, parking areas, and play areas is obtained and work incidental thereto, including the application of seal coatings. This definition includes the excavation, grading, and fill necessary to properly prepare the existing surface to accept a paved surface.

3.27. "Residential Concrete (specialty) Contractor" means a contractor whose primary business is installation and repair of concrete, concrete reinforcing materials, concrete products and accessories common to the industry, as used in residential applications. This definition includes the forming, pouring, and finishing of concrete structures such as footings, foundations, slabs, basements, sidewalks and walkways, driveways and parking areas, fence footings, decorative concrete walls not to exceed four (4) feet in height and retaining walls not to exceed five (5) feet in height and the excavation incidental to the performance of such work.

3.28. "Residential Contractor" means a person whose principal business is in connection with the construction, repair or improvement of real property used as, or intended to be used for, residential occupancy or work incidental thereto.

3.29. "Residential occupancy" means occupancy of a structure for residential purposes for periods greater than thirty consecutive calendar days.

3.30. "Residential Pools (specialty) Contractor" means a contractor whose primary business is the construction, service, and repair of residential swimming pools and spas, with or without solar heating devices, and work incidental thereto. Included in the scope of this definition is water and gas service lines from the point of service to the pool equipment, electrical wiring from pool equipment to first readily accessible disconnect, pool piping, fittings, back-flow prevention devices, waste lines and other integral parts of swimming pools and spas and attached solar water heating devices. Also included are swimming pool accessories, covers, safety devices and the installation of fencing around swimming pools. The construction of other structures or appurtenances is excluded.

3.31. "Residential Siding (specialty) Contractor" means a contractor whose primary business is the fabrication, construction, and/or installation of wood, aluminum, steel, or vinyl siding and work incidental thereto. All such materials must be applied in accordance with the manufacturers' specifications and, when necessary, on furred-up grill or network.

3.32. "Residential structure" means a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct or residential occupancy, which contains not more than three distinct floors which are above grade in any structural unit regardless of whether the building or structure is designed and constructed for one or more living units. Dormitories, hotels, motels, or other transient lodging units are not residential structures.

3.33. "Roofing (specialty) Contractor" means a contractor whose primary business is to install a watertight covering to roof surfaces by use of, but not limited to, cedar, cement, metal, composition shingles, wood shakes, cement and clay tile, built-up roofing, single ply, fluid-type roofing systems, and other acceptable roofing materials including spray urethane foam, asphalt, and application of protective or reflective roof, or both, and deck coatings. Included is sheet metal when in conjunction with a roofing project, application of protective roof and deck coatings, application of damp-proofing and/or waterproofing, installation of roof insulation panels and other roof insulation systems and work incidental thereto.

3.34. "Specialty Contractor" means a person who engages in specialty contracting services or work incidental thereto said specialty which do not substantially fall within the scope of any contractor classification as set out in WV Code 21-11-1 et seq.

3.35. "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

3.36. "Undertaking" means the entire construction project. The value of the undertaking shall be determined by adding the cost of labor and material required to accomplish it.

Section 4. LICENSURE REQUIRED.

4.1. On or after the first day of October, one thousand nine hundred ninety-one, no person may engage in the business of a contractor in this state without a license. Except as otherwise provided in WV Code 21-11-1 et seq, the following are exempt from licensure:

(1) Work done exclusively by employees of the United States government, the state of West Virginia, a county, municipality or municipal corporation, and any governmental subdivision or agency thereof directly in conjunction with and in the course of their employment.

(2) The sale or installation of a finished product, material or

article or merchandise which is not actually fabricated into and does not become a permanent fixed part of a structure;

(3) Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural or farming enterprise;

(4) A material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;

(5) Work performed by a public utility company regulated by the West Virginia public service commission and its employees;

(6) Repair work contracted for by the owner of the equipment on an emergency basis in order to maintain or restore the operation of such equipment;

(7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on business property owned or leased by the employer. The term "business property owned or leased by the employer" shall not include any property upon which work is performed by the owner or lessee employer for the purpose of: speculative sales or leasing; or otherwise intending the sale or lease of the property for commercial or residential use by an entity other than the employer itself;

(8) Work personally performed on a structure by the owner or occupant thereof; and

(9) Work performed when the specifications for such work have been developed or approved by engineering personnel employed by the owner of a facility by registered professional engineers licensed pursuant to the laws of this state when the work to be performed because of its specialized nature or process cannot be reasonably or timely contracted for within the general area of the facility.

4.2. A Copy of the license must be posted in a conspicuous position at every construction site where work is being done by the contractor. The contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts. No bid shall be accepted which does not bear on its face, the contractor's license number.

4.3. The Building inspector or other authority of any incorporated municipality or other political subdivision in this state charged with the duty of issuing building or other permits for construction as defined in this rule, shall not issue such permits to any person who does not possess a valid contractor's license when required by this rule.

4.4. (a) No license may be assigned, transferred or otherwise disposed of so as to permit the unauthorized use thereof. Any person who violates this section is subject to the penalties imposed in WV Code 21-11-14.

(b) No license may be used for any purpose by any person other than the person to whom the license is issued. The person who makes application for a license for the entity is the license holder. If the license holder severs his or her relationship with the entity, the entity must name a successor, subject to the approval of the Board and section 6 of this rule. The successor, who desires to be licensed under the provisions of WV Code 21-11-7, must notify the Board within thirty (30) days and must certify, on a form prescribed by the Board, the same information as was certified by the original license holder.

Section 5. LICENSE APPLICATION, RENEWAL

5.1. Any person desiring to be licensed as a contractor shall submit to the Board a written application requesting licensure, providing all information as the Board may require on forms supplied by the Board and shall pay the applicable license fee as defined in section 5.3 of this rule.

5.2. All license applicants must pass a written examination in the contractor classification(s) for which they seek licensure, as defined in Section 6 of this rule; provided that in accordance with WV Code 21-11-7(b), if a person holds a business registration certificate to conduct business in this state as a contractor on the thirtieth day of September, one thousand nine hundred ninety-one, the Board shall issue a contractor's license without examination if that person certifies with the Board, by affidavit, that he or she has complied with the requirements of WV Code 21-11-15(c), and pays the appropriate license fee.

5.3. Any person desiring a license shall, at the time of application, pay the annual fee of \$ 100.00. Except that in the case of a sole proprietorship conducting business only as an Electrical Contractor where the business owner holds an electrician's license issued under the provisions WV Code 29-3B-4 and provides proof thereof to the commissioner, the annual fee is \$20.00.

5.4. A license issued under the provisions of this rule is valid for twelve months from the date of issue unless sooner revoked for cause.

5.5. The holder of a valid license may renew the license on or before the expiration date by making renewal application on forms provided by the Board and paying the appropriate fee as set forth in section 5.3 of this rule. If the renewal application is

received or postmarked more than fifteen (15) days after the expiration date, the applicant is required to pay, in addition to the annual renewal fee, a penalty fee of \$100.00: Provided, that no license which has lapsed for a period of two years or more may be renewed. A renewal of a license may be conditional by action of the Board under the provisions of WV Code 21-11-13 and 21-11-14. The Board will provide each licensee with a renewal notice at least thirty (30) days in advance of the expiration date.

5.6. The Board may issue a conditional license to a person for bidding purposes only. A person may apply for a conditional license on special forms provided by the Board and the payment of a conditional license fee of \$ 50.00. A conditional license is valid for sixty (60) days from the date of issue. Under no circumstances may a person perform work or services for compensation under a conditional license. If the holder of a conditional license becomes a successful bidder and will be performing contracting work in West Virginia, the holder must make application for a contractor's license before work can commence. The \$50.00 cost of the conditional license will be deducted from the \$100.00 annual contractor license fee at the time of initial licensure only.

5.7. A duplicate license may be issued by the Board to persons who, by application and affidavit, certify that the original license certificate has been permanently lost or destroyed and that the applicant is in full compliance with the requirements of WV Code 21-11-1 et seq and this rule. The Board shall charge a fee of \$ 10.00 for each duplicate license issued.

Section 6. EXAMINATION REQUIRED.

6.1. On and after the first day of October, 1991, any person desiring a license under the provisions of WV Code 21-11-1 et seq and this rule, must be examined by the Board and achieve a minimum score of seventy (70) percent to qualify for a license. Any person who fails to achieve the minimum required score may apply for re-examination at the next regular examination session.

6.2. The Board shall provide examinations for each of the following contractor classifications:

- (a) electrical contractor;
- (b) general building contractor;
- (c) general engineering contractor;
- (d) heating, ventilating and cooling contractor;

- (e) multifamily contractor;
- (f) piping contractor;
- (g) plumbing contractor;
- (h) residential contractor; or
- (i) specialty contractor:
 - (1) drywall specialty contractor
 - (2) excavation specialty contractor
 - (3) landscaping specialty contractor
 - (4) masonry specialty contractor
 - (5) remodeling and repair specialty contractor
 - (6) residential asphalt specialty contractor
 - (7) residential concrete specialty contractor
 - (8) residential pools specialty contractor
 - (9) residential siding specialty contractor
 - (10) roofing specialty contractor

6.3. The Board will conduct examinations quarterly and at such other times as it considers necessary. The Board shall make available to all applicants, on request, an annual schedule of examination locations and dates. The Board shall notify all applicants for examination of the date, place, and time of examination at least fifteen (15) days prior to the scheduled date.

6.4. The applicant must take an examination in each classification for which a license is desired. Examinations shall be made available by a private testing agent(s) approved and certified by the Board to conduct such examinations. Examination fees will be charged for each classification examination requested and are the responsibility of the individual applicant. An applicant shall pay all examination fee(s) directly to the approved testing agent.

The individual taking an examination on behalf of an entity seeking licensure must be the owner, a partner, a corporate officer or a full-time employee of the entity. Upon the termination of the relationship of the individual who took the examination to obtain a license for an entity, the entity shall, within thirty (30) days of that termination, designate a new individual to take the examination for licensure.

Section 7. DISCIPLINARY POWERS OF THE BOARD

7.1. The Board may take the following disciplinary actions for causes defined in WV Code 21-11-14:

- (a) permanently revoke a license;
- (b) suspend a license for a specified period;

- (c) censure or reprimand a licensee;
- (d) impose limitations or conditions on the professional practice of a licensee;
- (e) impose requirements for remedial professional education to correct deficiencies in the education, training and skill of a licensee; and
- (f) impose a probationary period requiring a licensee to report regularly to the Board on matters related to the grounds for probation; the Board may withdraw probationary status if the deficiencies that require the sanction are remedied.

7.2. The Board may summarily suspend a licensee pending a hearing, as provided for in Section 9 of this rule, or pending an appeal after hearing upon a determination that the licensee poses a clear, significant and immediate danger to the public health and safety.

7.3. The Board may reinstate a suspended or revoked license of a person, if, upon a hearing, the Board finds and determines that such person is able to practice with skill and safety.

7.4. The Board may accept the voluntary surrender of a license: Provided, that such license may not be reissued unless the Board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fees.

7.5. A person adversely affected by disciplinary action may appeal to the Board within sixty days of the date such disciplinary action is taken. The Board shall hear the appeal in accordance with the provisions of WV code 29A-5-1, et seq , and Section 9 of this rule. The Board shall hold hearings in Charleston.

7.6. In all disciplinary hearings the Board has the burden of proof as to all matters in contention. No disciplinary action shall be taken by the Board except on the affirmative vote of at least six members of the Board. Except for violations of WV Code 21-11-13, no disciplinary action shall be taken by the Board for any such cause as is set out WV Code 21-11-14 unless the licensee has been finally adjudicated as having perpetrated such act in a court of record. Other than as specifically set out in WV Code 21-11-13, the Board has no power or authority to impose or assess damages.

Section 8. CEASE AND DESIST ORDERS.

8.1. Upon a determination that a person is engaged in

contracting business in this state without a valid license, the Board or Commissioner shall issue a cease and desist order requiring such person to immediately cease all operations in this state. The order shall be withdrawn upon issuance of a license to such person. After an administrative hearing, as provided for in Section 9 of this rule, the Board may impose a penalty of not less than two hundred dollars nor more than one thousand dollars upon any person engaging in contracting business in this state without a valid license.

8.2. Any person continuing to engage in contracting business in this state without a valid license after the service of a cease and desist order is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one month, or both fined and imprisoned. The Board may institute proceedings in the circuit court of the county in which the alleged violations of WV Code 21-11-1 et seq, and the provisions of this rule occurred or are now occurring to enjoin any such violation.

8.3. Any person who undertakes any construction work without a valid license when such license is required by WV Code 21-11-1, et seq, when the total cost of the contractor's construction contract on any project upon which the work is undertaken is twenty-five thousand dollars or more, shall, in addition to any other penalty herein provided, be assessed by the Board an administrative penalty not to exceed two hundred dollars per day for each day the person is in violation.

8.4. The Board shall, as defined in section 9 of this rule, provide for an administrative hearing before a penalty is assessed.

Section 9. ADMINISTRATIVE HEARINGS.

9.1. Any person adversely affected by any action of the Board, may appeal to the Board within sixty days of such action. The Board shall hear the appeal within fifteen days from receipt of notice of appeal in accordance with the provisions of WV Code 29A-5-1 et seq. Within five days of receipt of a request for hearing, the Board shall provide a notice containing the date, time, place of the hearing and a short and plain statement of the matters asserted.

9.2. The Board may employ a hearing examiner to conduct the hearings and present proposed findings of fact and conclusions of law to the Board for its action.

9.3. The Board shall provide a written final decision to the aggrieved person within thirty (30) days of the close of the

hearing. The final decision of the Board is subject to judicial review by the circuit court of competent jurisdiction. Any such appeal shall be filed with the court within thirty (30) days of the date of the final decision of the Board.

Section 10. SEVERABILITY

10.1. If any provisions of this rule or their application to any person is 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 severable.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

February 13, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

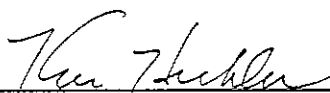
AGENCY: WV Contractor Licensing Board

RULE: New Rule, Series 2, West Virginia Contractor Licensing Act

DATE FILED AS AN EMERGENCY RULE: January 21, 1992

DECISION NO. 6-92

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


KEN HECHLER
Secretary of State

FILED
1992 FEB 14 PM 3:50
OFFICE OF THE SECRETARY OF STATE

KEN HECHLER
Secretary of State

MARY P. RATLIFF
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STATE OF WEST VIRGINIA

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DECISION

EMERGENCY RULE DECISION (ERD 6-92)

AGENCY: WV Contractor Licensing Board
RULE: New Rule, Series 2, West Virginia Contractor
Licensing Act

FIRST FILED AS AN EMERGENCY RULE: July 5, 1991

FIRST EMERGENCY AMENDMENT FILED: October 4, 1991

SECOND EMERGENCY AMENDMENT FILED: January 21, 1992

- par. 1 The West Virginia Contractor Licensing Board (Board) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State January 21, 1992 and with the LRMRC January 21, 1992.
- par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code §21-11 reads:
- (a) Pursuant to the provisions of §29A-1-1 et seq. of this code, the board shall adopt rules & regulations relating to the following:
- (1) The minimum qualifications for applicants for examination and license in each of the following specified classes of contractor:
- (A) Electrical contractor;
- (B) General building contractor;
- (C) General engineering contractor;
- (D) Heating, ventilating and cooling contractor;
- (E) Multifamily contractor;
- (F) Piping contractor;
- (G) Plumbing contractor;
- (H) Residential contractor; or
- (I) Specialty contractor;
- (2) The content of examinations for applicants in each class
- (3) Procedures for application, examination and license renewal and the manner in which the examination will be conducted;
- (4) The continued competency of licensees for purposes of renewal and reinstatement of licenses; and
- (5) Procedures for disciplinary action before the board.
- par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.
- par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:
- (g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.
- par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three

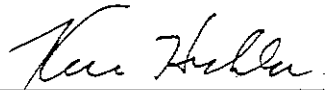
emergency categories.

par. 12 The facts and circumstances as presented by the Board are as follows:

To correct Title and Series number and to bring the emergency rule into conformity with the modifications made by the Legislative Rule Making Review Committee.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g).

par. 14 This decision shall be cited as Emergency Rule Decision 6-92 or ERD 6-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Contractor Licensing Board, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

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WEST VIRGINIA