

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

Form #2

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2002 JUN -7 A 9:33

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Contractor Licensing Board TITLE NUMBER: 28

RULE TYPE: Procedural CITE AUTHORITY: _____

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Written Contracts For Services

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

Andrew A. Brown

West Virginia Division of Labor

Room B-709, Building #6

State 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: Written Contracts for Services

Type of Rule: Legislative Interpretive X Procedural

Agency: WV Contractor Licensing Board

Address: WV Division of Labor

Room B-709, Bldg. #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					
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

No Fiscal Impact

3. Objectives of These Rules: This rule establishes the minimum requirements for written contracts as mandated by the WV Contractor Licensing Act, WV Code 21-11-10(b) and (c).

Rule Title: Written Contracts for Services

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:

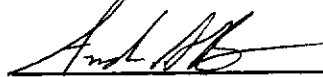
None

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, Senate Bill 429 was passed into law. This bill contained a mandate that all contractors who undertake projects valued more than \$10,000, labor and materials, must execute a written contract with the consumer. The bill also mandates that the Contractor Licensing Board file a procedural rule to establish the minimum content requirements and format for these contracts.

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Summary

This is a new rule as mandated by Senate Bill 429 which was passed into law during the 2002 Regular Session of the WV Legislature. The rule establishes the minimum content requirements for written contractors executed between consumers and licensees of the Contractor Licensing Board.

§28-4-1 General. This section states the scope, authority, filing date and effective date of the rule.

§28-4-2. Definitions. This section incorporates the definitions contained in the West Virginia Contractor Licensing Act, [§21-11 et seq.]. One additional definition is added to clarify that the requirement applies to agreements between contractors and consumer.

§28-4-3. Written Contracts Required. This section merely states the written contracts requirement from the Act.

§28-4-4. Form and Content Required. This section addresses the format of the contract and the minimum content requirements.

§28-4-5. Failure to execute written contracts as required; penalties. This section repeats the requirements and penalties directly from the Act.

§28-4-6. Proof of written contract required. This section identifies the Board's authority to require the submission of copies of contracts under certain circumstances.

§28-4-7. Enforcement. This section identifies the Contractor Licensing Board and the Division of Labor as the enforcement agencies.

**Title 28
Procedural Rule
Contractor Licensing Board**

**Series 4
Written Contracts for Services**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§28-4-1. General.

1.1. Scope. -- This procedural rule establishes the minimum requirements for written contracts as required under the West Virginia Code article eleven, chapter twenty-one, [§21-11 et seq.], the West Virginia Contractor Licensing Act. The intent of this written contract requirement is to provide an element of protection to private consumers who utilize the services of contractors licensed and regulated by the West Virginia Contractor Licensing Board.

1.2. Authority. -- W.Va. Code §21-11-10(b) and (c).

1.3. Filing Date. --

1.4. Effective Date. -- October 1, 2002

§28-4-2. Definitions.

2.1. The phrase "person for whom the work is being performed" is intended to mean a private individual who employs the services of a contractor licensed by the West Virginia contractor licensing board.

2.2. Except as otherwise stated in this section, all the definitions contained in W.Va. Code §21-11-3 are incorporated herein by reference.

§28-4-3. Written Contracts Required.

Effective the first day of October, two thousand two, no person licensed under the provisions of W.Va. Code article eleven, chapter twenty-one [§21-11 et seq.] may perform contracting work of an aggregate value of ten thousand dollars or more, including materials and labor, without a written contract, setting forth a description and cost of the work to be performed, signed by the licensee and the person for whom the work is to be performed.

§28-4-4. Form and Content Required.

4.1. There shall be no required format for written contracts. *Provided however*, All written contract documents must comply with the minimum content requirements defined in subsection two of section of this section. A standard contract form shall be available upon request from the Division of Labor's contractor licensing section. This standard form, when properly completed and executed, shall be deemed to comply with the requirements of this rule.

4.2. Every written contract executed as required by W.Va. Code section ten, article eleven, chapter twenty-one [§21-11-10 et seq.], shall contain, at the minimum, the following elements:

- a. The consumer's name and address;
- b. The contractor's name and address;
- c. The contractor's West Virginia Contractor License number;
- d. The address of the property where the project is intended to occur if other than the consumer's address;
- e. The nature, general description and scope of the project;
- f. Approximate starting date;
- g. Approximate completion date;
- h. The total cost of the contract and payment arrangements;
- i. A plainly worded offer and a clear and unconditional acceptance of that offer;
- j. Signature of the consumer and date signed; and
- k. Signature of the contractor and date signed.

4.3. An addendum may be added to a written contract after the execution date of the original contract. The addendum must make specific reference to the original contract document and be signed and dated by both the consumer and the contractor.

§28-4-5. Failure to execute written contracts as required; penalties.

5.1. Any licensed contractor who fails to execute a written contract as required by W.Va. Code section ten, article eleven, chapter twenty-one [§21-11-10 et seq.] and this rule, shall be subject to disciplinary action by the board.

5.2. The board has the power and authority to impose the following disciplinary actions:

- 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 education, training and skill of a licensee;
- 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; and
- g. Order a contractor who has been found, after hearing, to have violated any provision of W.Va. Code article eleven, chapter twenty-one [§21-11 et seq.] or its applicable rules to provide, as a condition of licensure, assurance of financial responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a cash bond, a certificate of deposit, an irrevocable letter of credit or performance insurance.

§28-4-6. Proof of written contract required.

6.1. After a consumer has filed a complaint against a licensed contractor, the board may order the contractor to submit a copy of the written contract covering the project in question.

6.2. If a contractor fails to submit to the board a copy of a contract complying with the requirements of this rule within ten days of the order for such submission, the contractor shall be subject to the penalties described in section five of this rule.

§28-4-7. Enforcement.

The enforcement of the provisions of this rule shall be vested with the West Virginia Contractor Licensing Board and the Division of Labor. *Provided however,* That persons licensed by the West Virginia Manufactured Housing Construction and Safety Standards Board and regulated under the provisions of W.Va. Code article nine, chapter twenty-one [§21-9 et seq.] and its applicable legislative rule [42 CSR 19] shall be required to adhere to the written contract requirements of that Board.