



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: Labor TITLE-SERIES: 42-21A
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: Licensing of Elevator Mechanics, Accessibility
Technicians, and Limited Apprentices and
Registration of Elevator Mechanic Apprentices
CITE STATUTORY AUTHORITY: W. Va. Code §21-3C-11 and §21-17-12

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) HB 4086

Section §64-10-2(b) Passed On 2/29/2024 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

May 1, 2024

This rule shall terminate and have no further force or effect from the following date:

August 01, 2029

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Mitchell E Woodrum -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

SERIES 21A
LICENSING OF ELEVATOR MECHANICS, ACCESSIBILITY TECHNICIANS, AND LIMITED TECHNICIANS AND
REGISTRATION OF ELEVATOR MECHANIC APPRENTICES

§42-21A-1. General.

1.1. Scope. -- This legislative rule governs the requirements and procedures for licensing elevator mechanics, accessibility technicians, limited technicians, and registration of elevator mechanic apprentices; fees; and penalties for violations in accordance with the Elevator Safety Act, W. Va. Code §21-3C-1 *et seq.*

1.2. Authority. -- W. Va. Code §21-3C-11 and §21-17-12.

1.3. Filing Date. -- March 29, 2024.

1.4. Effective Date. -- May 1, 2024.

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2029.

§42-21A-2. Application and Enforcement.

2.1. Application. This legislative rule applies to all persons working as elevator mechanics, accessibility technicians, limited technicians, or elevator mechanic apprentices governed or otherwise within the jurisdiction of the Elevator Safety Act, W. Va. Code §21-3C-1 *et seq.*

2.2. Enforcement. The enforcement of this legislative rule is vested with the Division of Labor.

§42-21A-3. Definitions.

3.1. "Accessibility technician" means a person who meets the requirements set forth in W. Va. Code §21-3C-10a(d) and this rule.

3.2. "Act" means the Elevator Safety Act, W. Va. Code §21-3C-1 *et seq.*

3.3. "ASME" refers to the American Society of Mechanical Engineers, Two Park Avenue, New York, New York 10016-5990.

3.4. "Cease and desist order" means an order issued by the Division of Labor pursuant to the Act and this rule to an unlicensed person who performs work for which a license is required or to a licensee who performs work outside of the license's classification.

3.5. "Commissioner" means the Commissioner of the West Virginia Division of Labor and his or her authorized representatives.

3.6. "Division" means the West Virginia Division of Labor and its authorized representatives.

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3.7. "Elevator apprentice" or "elevator mechanic apprentice" means a person who meets the requirements set forth in W. Va. Code §21-3C-10a(f) and this rule.

3.8. "Emergency," as used in W. Va. Code §21-3C-11(a)(5) and section 10 of this rule, means a disaster, act of God, or work stoppage, when so declared by the President of the United States or Governor of West Virginia.

3.9. "License classification" or "classification" means the scope of work of an elevator mechanic, accessibility technician, or limited technician as set forth in the Act and this rule.

3.10. "Limited technician" means a person who meets the requirements set forth in W. Va. Code §21-3C-10a(e) and this rule and is employed by a historic resort hotel.

3.11. "Limited use/limited application elevator endorsement" or "LULA elevator endorsement" means an endorsement to an accessibility technician license issued to a person who meets the requirements set forth in W. Va. Code §21-3C-10a(d)(3) and this rule.

3.12. "Other authorization to practice," as used in section 16 of this rule, means a nontransferable acknowledgement, other than a license, by another state government that is provided to an individual asserting that the individual has met the educational and examination requirements to engage in the performance of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators, related conveyances, or accessibility equipment.

§42-21A-4. Adoption of Standards.

The following ASME standards are incorporated by reference:

4.1. ASME Code A17.1- 2013/CSA B44-13, "Safety Code for Elevators and Escalators;"

4.2. ASME Code 17.2-2014, "Guide for Inspection of Elevators, Escalators, and Moving Walks;" and

4.3. ASME Code A18.1 - 2014, "Safety Standard for Platform Lifts and Stairway Chairlifts."

§42-21A-5. Licensure or Registration Required; Requirement to Work Under a Contractor's License.

5.1. Except as otherwise provided in the Act, no person may engage or offer to engage in the performance of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators, related conveyances, or accessibility equipment without a license.

5.2. A license issued pursuant to the Act and this rule is not transferable.

5.3. Except as otherwise provided in the Act, no person may work as an elevator mechanic apprentice unless he or she meets the requirements set forth in W. Va. Code §21-3C-10a(f) and is registered with the Commissioner in accordance with section 9 of this rule.

5.4. Any person licensed or registered pursuant to the Act and this rule shall carry proof of a valid license at all times when performing elevator work.

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5.5. Except as otherwise provided in the Act, a person licensed or registered pursuant to the Act and this rule must be, or be employed by, a contractor licensed pursuant to the West Virginia Contractor Licensing Act, W. Va. Code §30-42-1 *et seq.*

§42-21A-6. Licensure of Elevator Mechanics.

6.1. Any person desiring to be licensed as an elevator mechanic shall submit a completed application/affidavit requesting licensure to the Commissioner on forms supplied by the Division and pay the applicable license fee as prescribed in section 12 of this rule.

6.2. All applicants for an elevator mechanic license shall meet the requirements as set forth in W. Va. Code §21-3C-10a(c).

6.3. An elevator mechanic's license is valid for up to two years from the date on which it was issued unless sooner suspended or revoked by the Commissioner.

6.4. An elevator mechanic's license expires on the last day of the anniversary month from the month of initial licensure.

6.5. An elevator mechanic licensee may renew the license on or before its expiration date by submitting a renewal application on forms supplied by the Division and paying the applicable renewal fee as prescribed in section 12 of this rule. The Commissioner shall provide each licensee with a renewal notice at least 45 days in advance of the license's expiration date. If the renewal application is received or postmarked more than 15 days after the license's expiration date, the licensee shall pay a \$50 reinstatement fee in addition to the biennial renewal fee: *Provided*, That a license that has been expired for 90 days or more cannot be renewed/reinstated.

§42-21A-6A. Continuing Education Requirements for Elevator Mechanics; Proof of Completion.

6A.1. 16 hours of continuing education shall be required for elevator mechanic licensure renewal.

6A.2. Each elevator mechanic licensee shall submit proof of completion to the Commissioner prior to a license being renewed. The proof of completion shall have been acquired within the two-year period immediately preceding renewal.

6A.3. Each elevator mechanic licensee shall pay a fee directly to the entity providing the continuing education instruction.

6A.4. If an elevator mechanic licensee is unable to complete the required continuing education instruction prior to the license's expiration due to a temporary disability, military service, or other good cause shown, the licensee may submit a written request for a waiver to the Commissioner. The Commissioner may approve or deny the waiver request.

§42-21A-7. Licensure of Accessibility Technicians; LULA Elevator Endorsement.

7.1. Any person desiring to be licensed as an accessibility technician shall submit a completed application/affidavit requesting licensure to the Commissioner on forms supplied by the Division and pay the applicable license fee as prescribed in section 12 of this rule.

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7.2. All applicants for an accessibility technician license shall meet the requirements as set forth in W. Va. Code §21-3C-10a(d).

7.3. Any accessibility technician licensee desiring a LULA elevator endorsement shall meet the requirements as set forth in W. Va. Code §21-3C-10a(d)(3).

7.4. An accessibility technician's license or an accessibility technician license with a LULA elevator endorsement is valid for up to two years from the date on which it was issued unless sooner suspended or revoked by the Commissioner.

7.5. An accessibility technician's license or an accessibility technician license with a LULA elevator endorsement expires on the last day of the anniversary month from the month of initial licensure.

7.6. An accessibility technician licensee or an accessibility technician licensee with a LULA elevator endorsement may renew the license on or before its expiration date by submitting a renewal application on forms supplied by the Division and paying the applicable renewal fee as prescribed in section 12 of this rule. The Commissioner shall provide each licensee with a renewal notice at least 45 days in advance of the license's expiration date. If the renewal application is received or postmarked more than 15 days after the license's expiration date, the licensee shall pay a \$50 reinstatement fee in addition to the biennial renewal fee: *Provided*, That a license that has been expired for 90 days or more cannot be renewed/reinstated.

§42-21A-8. Licensure of Limited Technicians.

8.1. Any person desiring to be licensed as a limited technician shall submit a completed application/affidavit requesting licensure to the Commissioner on forms supplied by the Division and pay the applicable license fee as prescribed in section 12 of this rule.

8.2. All applicants for a limited technician license shall meet the requirements as set forth in W. Va. Code §21-3C-10a(e).

8.3. A limited technician's license is valid for up to two years from the date on which it was issued unless sooner suspended or revoked by the Commissioner.

8.4. A limited technician's license expires on the last day of the anniversary month from the month of initial licensure.

8.5. A limited technician licensee may renew the license on or before its expiration date by submitting a renewal application on forms supplied by the Division and paying the applicable renewal fee as prescribed in section 12 of this rule. The Commissioner shall provide each licensee with a renewal notice at least 45 days in advance of the license's expiration date. If the renewal application is received or postmarked more than 15 days after the license's expiration date, the licensee shall pay a \$50 reinstatement fee in addition to the biennial renewal fee: *Provided*, That a license that has been expired for 90 days or more cannot be renewed/reinstated.

§42-21A-8A. Work Not Permitted Under a Limited Technician License.

A limited technician may not replace any of the following:

- 8A.1. Governors;
- 8A.2. Sheave wheels or bearings;
- 8A.3. Cables and shackles;
- 8A.4. Ring gears and worn gears;
- 8A.5. Buffers;
- 8A.6. Traveling cables;
- 8A.7. Hydro pumps;
- 8A.8. Hydro pump motors;
- 8A.9. Hydro valve chests;
- 8A.10. Jack packing and seals; and
- 8A.11. Rope grippers.

§42-21A-9. Registration of Elevator Apprentices.

9.1. Any person desiring to be registered as an elevator apprentice shall submit a completed application/affidavit requesting registration to the Commissioner on forms supplied by the Division.

9.2. Pursuant to W. Va. Code §21-3C-10a(f), all elevator apprentices are required to be currently enrolled in an elevator apprentice program and in good standing.

9.3. An elevator apprentice's certificate of registration is valid for up to two years unless sooner suspended or revoked by the Commissioner.

§42-21A-10. Emergency Requests for Elevator Mechanic or Accessibility Technician License.

10.1. If the number of persons holding current elevator mechanic or accessibility technician licenses is insufficient to respond to a declared state of emergency, a licensed elevator contractor may request that the Commissioner issue an emergency elevator mechanic or accessibility technician license to a person certified by the contractor to have an acceptable combination of documented experience and education to perform elevator work without direct supervision.

10.1.1. A licensed elevator contractor shall submit a notarized affidavit to the Commissioner certifying that the emergency license applicant has an acceptable combination of documented experience and education for the applicable license classification.

10.1.2. An applicant shall apply for the applicable emergency license classification within five business days after commencing work requiring a license.

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10.1.3. An emergency license issued in accordance with the provisions of this section shall identify the specific elevators, accessibility equipment, or geographical areas where the emergency licensee is authorized to work.

10.2. An emergency license issued in accordance with the provisions of this section is valid for a period of no more than 30 days from the date of issuance.

§42-21A-11. Requests for Temporary Elevator Mechanic License.

11.1. If there are no licensed elevator mechanics available, a licensed elevator contractor may request that the Commissioner issue a temporary elevator mechanic license to a person certified by the contractor to have an acceptable combination of documented experience and education to perform elevator work without direct supervision.

11.1.1. A licensed elevator contractor shall submit a notarized affidavit to the Commissioner certifying that the temporary elevator mechanic license applicant has an acceptable combination of documented experience and education.

11.1.2. The applicant shall apply for a temporary elevator mechanic license prior to commencing elevator work.

11.1.3. A temporary license issued in accordance with the provisions of this section shall identify the specific elevators or geographical areas where the licensee is authorized to work.

11.2. A temporary license issued in accordance with the provisions of this section is valid for a period of no more than 30 days from the date of issuance.

§42-21A-12. Licensure Fees.

12.1. An initial or renewal applicant for an elevator mechanic license, accessibility technician license, or limited technician license shall pay a \$180 biennial license fee: *Provided*, That no license fee shall be charged if the applicant is a licensed contractor pursuant to W. Va. Code §30-42-1 *et seq.* and has paid a contractor license fee.

12.1.1. If a renewal application is received or postmarked more than 15 days after the license's expiration date, the licensee shall pay a \$50 reinstatement fee in addition to the \$180 biennial renewal fee.

12.1.2. A license that has been expired for 90 days or more cannot be renewed/reinstated.

12.2. An applicant for a temporary elevator mechanic license shall pay a \$90 license fee.

12.3. There is no license fee charged for the issuance of an emergency elevator mechanic or emergency accessibility technician license.

12.4. There is no fee charged for an elevator mechanic apprentice registration.

§42-21A-13. Denial, Suspension, Revocation, or Reinstatement of Licenses or Certificates of Registration; Investigations; Grounds for Disciplinary Action.

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13.1. The Commissioner may deny, suspend, revoke, or reinstate a license or certificate of registration in accordance with the provisions of the Act and this rule. A violation of the Act or this rule is grounds for the denial, suspension, revocation, or refusal to reinstate a license or certificate of registration and permits the imposition of disciplinary action.

13.2. Upon receipt of a complaint or upon his or her own inquiry, the Commissioner shall conduct an investigation to determine whether there are grounds for disciplinary action against a licensee or registrant. All complaints shall be in writing and include the name, address, and phone number of the complainant. The Commissioner shall provide a copy of the complaint to the licensee or registrant.

13.3. Disciplinary action may not be imposed without providing the licensee or registrant with notice and opportunity for a hearing in accordance with the provisions of W. Va. Code §29A-5-1 *et seq.*

13.3.1. The Commissioner may conduct the hearing or appoint a hearing examiner.

13.3.2. A licensee or registrant has a right to attend the hearing in person, to be represented by an attorney licensed to practice in this state, or to submit a written response to the Commissioner, and may offer testimony and submit relevant factual information: *Provided*, That if the licensee or registrant receives proper notice of the hearing, the licensee's or registrant's failure to attend the hearing does not preclude the imposition of disciplinary action.

13.3.3. If a hearing examiner is appointed, the hearing examiner shall submit a recommended decision to the Commissioner within 10 days of the hearing's conclusion. The hearing examiner may recommend the imposition of any appropriate disciplinary action permitted by the Act or this rule. The Commissioner shall accept, reject, or modify the hearing examiner's recommended decision and issue a final order within 10 days of receipt of the recommended decision.

13.3.4. If the Commissioner conducts the hearing, he or she shall issue a final order within 10 days of the hearing's conclusion. If the Commissioner concludes that a violation of the Act or this rule occurred, he or she may impose any appropriate disciplinary action permitted by the Act or this rule.

§42-21A-14. Cease and Desist Orders; Penalties.

14.1. Upon a determination that a person is engaged in elevator work in this state without a valid license, the Division shall issue a cease and desist order requiring that person to immediately cease all operations in this state. The person can immediately engage in elevator work upon issuance of a license.

14.2. Any person continuing to engage in elevator work after the issuance of a cease and desist order is subject to a penalty of not less than \$200 nor more than \$1,000 as set forth in W. Va. Code §21-3C-12(b).

§42-21A-15. Appeals.

Any person adversely affected by a final order of the Commissioner may appeal the order to the Intermediate Court of Appeals as provided in W. Va. Code §51-11-1 *et seq.* and §29A-5-4.

§42-21A-16. Reciprocity; Work Experience.

16.1. To the extent that other states license or issue other authorization to practice for elevator mechanics, accessibility technicians, limited technicians, or elevator mechanic apprentices, and have

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requirements equivalent to the Act and this rule, the Commissioner, in his or her discretion, may grant licenses of the same classification without examination to elevator mechanics, accessibility technicians, limited technicians, or elevator mechanic apprentices licensed or authorized by other states, as follows:

16.1.1. The applicant has provided satisfactory proof of his or her qualifications, including the applicant's compliance with all requirements of W. Va. Code §21-17-3(a); and

16.1.2. The applicant has paid the applicable license fee as prescribed in section 12 of this rule.

16.2. To the extent that an applicant is seeking licensure based on work experience, the Commissioner, in his or her discretion, may grant a license with the applicable classification without examination as follows:

16.2.1. The applicant's work experience is in a state that does not license or issue other authorization to practice for the performance of elevator work;

16.2.2. The applicant has provided satisfactory proof of his or her qualifications, including the applicant's compliance with all requirements of W. Va. Code §21-17-4; and

16.2.3. The applicant has paid the applicable license fee as prescribed in section 12 of this rule.