WEST VIRGINIA CODE CHAPTER 21 ARTICLE 3C

WV Legislature

§21-3C-1. Definitions.

(1) "Accessibility equipment" means lifting devices designated to remove access barriers in public buildings and private residences for persons with physical challenges, including residential elevators, limited use/limited application elevators, vertical platforms, inclined platform lifts and stairway chairlifts.

(2) "Certificate of acceptance" means a certificate issued by the Division of Labor certifying that a newly installed elevator has been inspected and was found to be installed in compliance with the safety standards set forth in the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME) A17.1-3, "Safety Code for Elevators" and ASME A18.1, "Safety Code for Platform Lifts and Stairway Chairlifts."

(3) "Certificate of competency" means a certificate issued by the Division of Labor certifying that an individual is qualified to inspect elevators.

(4) "Certificate of operation" means a certificate issued by the Division of Labor certifying that an elevator has been inspected and is safe for operation.

(5) "Commissioner" means the Commissioner of the Division of Labor.

(6) "Division" means the Division of Labor.

(7) "Division inspector" means an employee or contractor of the division who has been examined and issued a certificate of competency and who only inspects elevators in state owned buildings.

(8) "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, platform lifts for loading docks, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists or other similar temporary lifting or lowering apparatus.

(9) "Elevator apprentice" means a person who meets the requirements set forth in legislative rule promulgated pursuant to this article.

(10) "Elevator mechanic" means a person who possesses an elevator mechanic's license in accordance with the provisions of this article and who is engaged in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators or related conveyances covered by this article.

(11) "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.

WV Legislature

(12) "Inspector" means both a division inspector and a private inspector.

(13) "License" means a license issued to an elevator mechanic, accessibility technician or limited technician pursuant to this article.

(14) "Private residence elevator" means a passenger elevator of which use is limited by size, capacity, rise and speed, and access is limited by its location, by the requirement of a key for its operation or by other restriction.

(15) "Passenger elevator" means an elevator that is designed to carry persons to its contract capacity.

(16) "Limited Use/Limited Application elevator" means a power elevator in which the use and application is limited by size, capacity, speed and rise.

(17) "Private inspector" means a person who has been examined and issued a certificate of competency to inspect elevators within this state.

WV Legislature

§21-3C-2. Inspectors; application; certificates of competency.

(a) No person may serve as an inspector unless he or she successfully completes the examination for Qualified Elevator Inspector (QEI) from an examination organization approved by the commissioner and holds a certificate of competency for elevator inspections issued by the division.

(b) The application for elevator inspector shall be in writing, accompanied by a fee of $10, upon a form furnished by the division. The applicant shall state his or her level of education, previous employers, the period of employment, the position held with each employer, and other information required by the division. The applicant shall also submit a copy of his or her QEI card, and a letter from one of his or her previous employers concerning his or her character and experience.

(c) Applications which contain any willfully submitted false or untrue information shall be rejected.

(d) The division shall issue a certificate of competency for elevator inspections to an applicant who successfully completes the examination and who complies with the requirements of this article and legislative rules promulgated by the division.

(e) Any person hired as a private inspector by a county or municipality shall possess a certificate of competency issued by the division.

(f) The division may hire division inspectors or enter into a contract for the services of a division inspector so long as the inspector has been certified competent by the division. The division may hire an inspector supervisor who shall supervise the inspection activities under this article.

WV Legislature

§21-3C-2a. Installation prohibited; exemptions; two-way communication required; key required.

(a) On and after July 1, 2007, no private residence elevator may be installed in a nonresidential setting.

(b) A private residence elevator installed in a nonresidential setting which was in use on July 1, 2007, may continue in use so long as the elevator:

(1) Meets the specifications as set forth in the American Society of Mechanical Engineers (ASME) Safety Code for Elevators and Escalators A17.1 5.3 "Safety Code for Elevators";

(2) Has a method of two-way communication between the car and each floor served by the elevator;

(3) Is operated automatically; and

(4) Is inspected annually by an inspector and is issued a certification of operation by the division.

(c) New residential elevators shall undergo an acceptance test performed by an inspector, and the inspector shall file a report of the test with the division.

(d) An elevator in a residential property shall be inspected by an inspector when the residential property is transferred, and the inspector shall file a report of the inspection with the division.

WV Legislature

§21-3C-3. Suspension or revocation of certificates.

A certificate of competency for elevator inspectors may be suspended or revoked by the division if the inspector is found to be incompetent or untrustworthy or for the falsification of any matter or statement contained on the application or in a report of any inspection. Any willfully submitted false statement contained in an inspection report shall constitute grounds for suspension of the certificate of competency.

WV Legislature

§21-3C-4. Registration of elevators; notification to counties and municipalities.

The owner or operator of an elevator shall register each elevator with the division, giving the type, capacity and description, name of manufacturer, and purpose for which each is used. 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 wherein the elevators are located.

WV Legislature

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.

(a) A county or municipality may hire a private inspector or contract with any person who possesses a West Virginia elevator inspector's certificate of competency issued by the Division.

(b) The county or municipality shall ensure that every elevator which has been in use for five years or more is inspected annually. A private inspector may inspect any elevator in the state. A division inspector may inspect any elevator in the state for the purpose of monitoring whether private inspectors are in compliance with the provisions of this article.

(c)(1) The county or municipality shall ensure that each newly installed elevator within its jurisdiction is inspected and issued a certificate of acceptance by the Division prior to being placed in service.

(2) A certificate of acceptance shall only be issued if the elevator was installed in compliance with the safety standards set forth in the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME) A17.1-3, "Safety Code for Elevators" and ASME A18.1, "Safety Code for Platform Lifts and Stairway Chairlifts".

(3) The acceptance inspection shall be subject to the same procedures and requirements as any other elevator inspection.

WV Legislature

§21-3C-6. Report of inspection; hearing on construction plans and specifications; findings and orders of division.

(a) The division shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, prescribing inspection procedures and reporting requirements.

(b) Each inspector shall submit a complete report of each inspection made of an elevator to the division and to the county or municipality in which the elevator is located.

(c)(1) The inspection report shall list all changes or repairs required to be made for the safe operation of the elevator. 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.

(2) The owner or operator, within twenty days from receipt of the copy of an inspection report, may make written application to the division, upon forms to be furnished by the division, for a hearing on the inspection report including the issue of whether the elevator in question is reasonably safe. The division shall promptly consider the submitted application.

(3) If it appears from the evidence that the elevator will be reasonably safe to operate without the recommended changes or repairs set forth in the report or by making only a part of the recommended changes or repairs, the division shall make its finding and order accordingly. If the finding and order require changes or repairs to be made to the elevator, the division may not issue a certificate of operation until the elevator owner has complied with the order or the division issues its approval of the change or repair plans or specifications. If the finding and order of the division has been affirmed or modified by appeal, on the grounds of reasonable safety considered by the division, the division shall, upon the owner or operator's compliance with the order, issue the certificate of operation, but if the finding and order of the division has been vacated, the certificate of operation shall be issued immediately.

(4) An elevator owner adversely affected by a finding and order of the division, is entitled to judicial review of the finding and order in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code.

(d) No elevator may be operated after being inspected without having the certificate of operation conspicuously posted except during the period a hearing on the issuance of the certificate of operation is pending.

WV Legislature

§21-3C-7. Safety equipment.

Every passenger elevator shall be equipped, maintained and operated in a safe manner in accordance with legislative rules promulgated by the division as authorized by this article.

WV Legislature

§21-3C-8. Certificate of operation; renewal.

A certificate of operation for any elevator may not be issued until the elevator has been inspected for safety and the inspection report filed with the division. The certificate of operation shall list the date of inspection and shall expire one year after the date of inspection. The certificate of operation shall be conspicuously posted in the elevator at all times. An expired certificate of operation shall be renewed in the manner that the prior certificate was obtained.

WV Legislature

§21-3C-9. Permits for removal or repairs.

Before any existing elevator is removed to a different location, an application of specifications shall be submitted to the division listing such information concerning the installation and operation of the elevator as the division may require on forms designed and furnished by the division. Copies of the complete installation plans shall be submitted with the application.

In all cases where any changes or repairs proposed by the owner or operator which alter the elevator's construction or classification, grade or rated lifting capacity, except when made pursuant to a report of an inspector, the owner or operator of the elevator shall submit to the division an application containing such information as deemed appropriate by the division.

Upon approval of such application and installation plans, the division shall issue a permit for the installation or repair of such elevator. No elevator being removed and reinstalled or repaired may be operated until its completion, in accordance with the approved plans and specifications: Provided, That the division may grant a temporary permit to such elevator, authorizing its operation.

WV Legislature

§21-3C-10. Enforcement; notice of defective machinery.

If during an inspection the division or the inspector finds that a passenger elevator or a part thereof cannot be operated safely, the division or the inspector shall contact the owner or operator in writing stating the deficiencies and recommend changes or alterations and shall post a notice upon such elevator prohibiting further use of the elevator. The notice shall be in effect until the changes or alterations set forth in the notice have been made. The notice shall contain a statement that operators or passengers are subject to injury by its continued use, a description of the alteration or other change necessary to be made in order to secure its safe operation, date of such notice, and the name and signature of the inspector issuing the notice.

If any inspector finds a passenger elevator to be so unsafe that it represents imminent danger of death or physical injury, that unit shall be sealed out of service and a hazard notice as prescribed by the division posted thereon. The division shall be notified immediately as to the location and condition of the unit.

Any passenger elevator, once sealed, may not be operated except for the purpose of making repairs and in such a manner as prescribed by the division until all defects are corrected and the unit has been inspected and deemed safe by the division. The division shall promulgate legislative rules, as authorized by this article, to develop procedures for sealing and barricading an elevator once it has been declared inoperable.

No seal, notice or barricade placed on or around an elevator in accordance with the provisions of this article may be removed, obstructed or in any way altered without the written consent of the division.

WV Legislature

§21-3C-10a. License requirements for elevator mechanics, accessibility technicians, limited technicians; contractors license requirements; supervision of elevator apprentices requirements.

(a) A person may not engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyances covered by this article in this state, unless he or she has a license issued by the commissioner in accordance with this article.

(b) A person licensed under this article shall:

(1) Have in his or her possession a copy of the license issued pursuant to this article on any job on which he or she is performing elevator mechanic work; and

(2) Be, or be employed by, a contractor licensed pursuant to the provisions of §30-42-1 *et seq*., of this code unless the work is performed by a historic resort hotel's regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the historic resort hotel which is not intended for speculative sale or lease;

(c) *Elevator mechanic license*. —

(1) To obtain an elevator mechanic's license, a person shall:

(A) Successfully complete educational programs that are registered with the Bureau of Apprenticeship and Training of the United States Department of Labor, including all required examinations and work experience: *Provided*, That if an applicant successfully completes such educational program prior to being registered with the Bureau of Apprenticeship and Training of the United States Department of Labor, the division may grant a license to the applicant after he or she demonstrates to the commissioner that he or she has successfully completed all the test and work experience requirements; or

(B) (i) Provide to the commissioner an acceptable combination of documented experience and educational credits of not less than four years of recent and active experience in the elevator industry in construction, maintenance, or service/repair or any combination thereof, as verified by current and previous employers listed to do business in this state, on a sworn affidavit; and

(ii) Obtain a score of 70 percent or better on a written competency examination approved or provided by the division.

(2) A licensed elevator mechanic may work on all elevators covered by this article.

(d) *Accessibility technician license*. —

(1) To obtain an accessibility technician's license a person shall:

WV Legislature

(A) Provide to the commissioner a certificate of completion of an accessibility training program for the elevator industry such as the Certified Accessibility Training (CAT) program by the National Association of Elevator Contractors, or an equivalent nationally recognized training program; or

(B) (i) Have at least 18 months experience in the construction, maintenance, service and repair, or any combination thereof, as verified by current and previous employers, licensed to do business in this state, on a sworn affidavit, of accessibility lifts;

(ii) Have at least one year of documented vocational training and/or an associate degree in a related field; and

(iii) Obtain a score of 70 percent or better on a written competency examination approved or provided by the commissioner.

(2) A person holding an accessibility technician license may only perform work on accessibility equipment.

(3) A person holding an accessibility technician license may obtain a limited use/limited application (LULA) elevator endorsement. To obtain the LULA elevator endorsement, such person shall:

(A) (i) Hold a current accessibility technician license;

(ii) Provide the commissioner with a certificate of LULA manufacturer’s training; and

(iii) Provide at least one year of documented work experience to the commissioner, on a sworn affidavit, in the construction, maintenance, service and repair of LULA elevators and comparable equipment, which was completed under the supervision of a licensed accessibility technician; or

(B) As of July 1, 2012, have at least 18 months of accessibility technician’s experience in construction, maintenance, service and repair, or any combination thereof, as verified by current and previous employers, licensed to do business in this state, on a sworn affidavit: *Provided*, That an additional one year of documented work as an accessibility technician with certification of manufacturer’s factory training, is required before a LULA endorsement may be obtained.

(4) Any person carrying an accessibility license as of July 1, 2012, shall receive the required endorsement to continue to work on this type of equipment, and will be qualified to supervise future applicants as described in this section.

(e) *Limited technician license*. —

(1) To obtain a limited technician’s license an applicant shall:

WV Legislature

(A) Complete a certified apprenticeship program, registered by the United States Department of Labor established at a historic resort hotel, qualifying for a limited technician license; or

(B) Provide an acceptable combination of documented experience, and educational credits of not less than three years of recent and active experience in the elevator industry, in maintenance, or service/repair or any combination thereof, as verified by current and previous employers authorized to do business in this state, on a sworn affidavit; and obtain a score of 70 percent or better on a written competency examination approved or provided by the division.

(2) A person holding a limited technician license may only perform work at a historic resort hotel: *Provided*, That for purposes of this section, "historic resort hotel" has the same meaning ascribed to it in §29-25-2 of this code.

(f) *Elevator apprentice*. —

(1) An elevator apprentice who is enrolled in an apprenticeship program approved by the commissioner, and who is in good standing in the program, may work under the supervision of a licensed elevator mechanic, as follows:

(A) An apprentice who has not successfully completed the equivalent of at least one year of the program may work only under the direct supervision of a licensed elevator mechanic who is present on the premises and available to the apprentice at all times.

(B) An apprentice who has successfully completed the equivalent of at least one year of the program may:

(i) Work under the direct supervision of a licensed elevator mechanic as set forth in subdivision (1) of this subsection; and

(ii) Perform the tasks set forth in this paragraph, only if delegated by and performed under the general supervision of a licensed elevator mechanic, who must, at a minimum, meet the apprentice on the job at the beginning of each day to delegate the specific tasks, and who remains responsible for the delegated tasks:

(I) Oiling, cleaning, greasing and painting;

(II) Replacing of combplate teeth;

(III) Relamping and fixture maintenance;

(IV) Inspection, cleaning and lubricating of hoistway doors, car tops, bottoms and pits; and

(V) Observing operation of equipment.

WV Legislature

§21-3C-10b. Issuance and renewal of licenses.

(a) Upon approval of a properly completed application for licensure, the commissioner may issue a person a license under the provisions of this article.

(b) The licenses issued under the provisions of this article shall be renewed biennially upon application for renewal on a form prescribed by the commissioner and payment of a fee established by legislative rule.

(c) Upon a proper application for renewal, the commissioner shall renew a license, even if the license holder is unemployed or not working in the industry at the time of renewal: Provided, That before the license holder may engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the license holder shall be a contractor, or be employed by a contractor licensed pursuant to the provisions of §30-42-1 *et seq.*, of this code.

WV Legislature

§21-3C-11. Disposition of fees; legislative rules.

(a) The division shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards, qualifications, and procedures for submitting applications, taking examinations and issuing and renewing licenses, certificates of competency and certificates of operation of the three licensure classifications set forth in §21-3C-10a of this code;

(2) For the renewal of a license, even if the licensee is unemployed or not working in the industry: *Provided*, That to engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant to §30-42-1 *et seq*., of this code;

(3) Qualifications and supervision requirements for elevator apprentices;

(4) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work as defined in this article and who apply for licensure on or before July 1, 2010: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant may, at the discretion of the commissioner, be subject to all licensure requirements, including the examination;

(5) Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God, or work stoppage when the number of persons in the state holding licenses issued pursuant to this article is insufficient to cope with the emergency;

(6) Provisions for the granting of temporary licenses in the event that there are no elevator mechanics available to engage in the work of an elevator mechanic as defined by this article;

(7) Continuing education requirements;

(8) Procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures;

(9) Fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and other costs necessary to administer the provisions of this article;

(10) Enforcement procedures; and

(11) Any other rules necessary to effectuate the purposes of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall

WV Legislature

establish the amount of any fee authorized pursuant to the provisions of this article: *Provided*, That in no event may the fees established for the issuance of certificates of operation exceed $90.

(c) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury known as the Elevator Safety Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligations: *Provided*, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

(d) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

(e) The commissioner or his or her authorized representatives may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation and the qualifications which are adequate, reasonable and necessary for the elevator mechanic and inspector.

WV Legislature

§21-3C-12. Penalties.

(a) On and after January 1, 2010, the commissioner may issue a cease and desist order to any person engaging in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators or related conveyances covered by this article in this state without a license, or inspecting elevators or related conveyances covered by this article without a certificate of competency, or operating an elevator or related conveyance covered by this article without a certificate of operation.

(b) Any person who violates a cease and desist order is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(1) For the first offense, a fine of not less than $200 nor more than $1,000;

(2) For the second offense, a fine of not less than $500 nor more than $2,000, or confinement in jail for not more than six months, or both;

(3) For the third and subsequent offenses, a fine of not less than $1,000 nor more than $5,000, and confinement in jail for not less than thirty days nor more than one year.

(c) Each day that a person violates a cease and desist order or is otherwise not in compliance with the provisions of this article constitutes a separate offense.

(d) The Commissioner of Labor may institute proceedings in the circuit court of the county where the alleged violation of the provisions of this article occurred or are occurring to enjoin any violation of any provision of this article. A circuit court by injunction may compel compliance with the provisions of this article, with the lawful orders of the Commissioner of Labor and with any final decision of the Commissioner of Labor. The Commissioner of Labor shall be represented in all such proceedings by the Attorney General or his or her assistants.

WV Legislature

§21-3C-13. Mining and industrial elevators and general public elevators exempt.

The provisions of this article shall not be applicable to elevators or similar devices used by mining or industrial operations, or to elevators located within any single family residential dwelling.

WV Legislature

§21-3C-14. Inapplicability of local ordinances.

Effective January 1, 2022, a political subdivision of this state may not require, as a condition precedent to the performance of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyances covered by this article in the political subdivision, a person who holds a valid license to perform such work issued under the provisions of this article, to have any additional occupational license or other evidence of competence to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyance covered by this article.

WV Legislature