WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

House Bill No. 4038

(By Delegates Morgan, Martin, Argento, Beach, Caputo, Hartman,
D. Poling, Staggers, Swartzmiller, Canterbury and Rowan)

Passed March 8, 2008

In Effect Ninety Days from Passage
AN ACT to amend and reenact §21-3C-1, §21-3C-2, §21-3C-7, §21-3C-8, §21-3C-11 and §21-3C-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-3C-10a, relating to the Elevator Safety Act; requiring annual inspections of elevators; requiring elevator mechanics to be licensed by the Division of Labor; authorizing legislative rules; providing for fees; and providing civil and criminal penalties for noncompliance.

Be it enacted by the Legislature of West Virginia:

That §21-3C-1, §21-3C-2, §21-3C-7, §21-3C-8, §21-3C-11 and §21-3C-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §21-3C-10a, all to read as follows:

CHAPTER 21. DIVISION OF LABOR.

ARTICLE 3C. ELEVATOR SAFETY.
§21-3C-1. Definitions.

1 (1) "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."

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

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

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

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

6 (6) "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.

7 (7) "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, 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.

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

(9) "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.

(10) "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.

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

(12) "License" means a license issued to an elevator mechanic pursuant to this article.

(13) "Limited use/limited access 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.

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

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

§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.

§21-3C-10a. License requirements for elevator mechanics; contractors license required; supervision of elevator apprentices required.

(a) On and after the first day of January, two thousand ten, no person may 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 of Labor in accordance with the provisions of this article.

(b) A person licensed under this article must:

(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 article eleven, chapter twenty-one of this code.

(c) An elevator apprentice may work only under the direct supervision of a licensed elevator mechanic, as set forth in legislative rules promulgated pursuant to this article.

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

(a) The Division shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a 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;

(2) Qualifications and supervision requirements for elevator apprentices;

(3) 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 the first day of July, two thousand ten: 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;

(4) Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God or work
(5) 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;

(6) Continuing education requirements;

(7) Reciprocity provisions;

(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 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 fifty dollars.

(c) All fees collected pursuant to the provisions of this article shall be 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: Provided. That amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(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.

(c) The Commissioner and his or her Deputy Commissioner or any compliance officer of the Division as authorized by the Commissioner 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.

§21-3C-12. Penalties.

(a) On and after the first day of January, two thousand ten, 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 two hundred dollars nor more than one thousand dollars;

(2) For the second offense, a fine of not less than five hundred dollars nor more than two thousand dollars, 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 one thousand dollars nor more than five thousand dollars, 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 27th day of March, 2008.

Governor