WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2012

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4006

(By Delegate Manchin)

Passed March 10, 2012

To Take Effect From Passage
AN ACT to amend and reenact §21-3C-1, §21-3C-10a and §21-3C-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-3C-10b, all relating to elevators; defining certain terms; requiring licensure; providing licensure requirements for elevator mechanics, accessibility technicians and limited technicians; providing requirements to obtain a limited use/limited application endorsement; providing requirements for issuance and renewal of licenses; modifying rule-making authority of Commissioner of Labor; and removing reciprocity provisions.

Be it enacted by the Legislature of West Virginia:

That §21-3C-1, §21-3C-10a and §21-3C-11 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-10b, all to read as follows:
ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-1. Definitions.

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

4. (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. (5) “Commissioner” means the Commissioner of the Division of Labor.

6. (6) “Division” means the Division of Labor.

7. (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.

(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.
"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.

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

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

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

§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 article eleven, chapter twenty-one 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% 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:

(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 eighteen 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% 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 eighteen 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:

(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% 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 section two, article
twenty-five, chapter twenty-nine 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
delinate 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.

§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 section ten(c), article eleven, chapter twenty-one of the code.

§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 of the three licensure classifications set forth in
section ten-a of this article;

(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 the provisions of section
ten-a, article eleven, chapter twenty-one of the 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 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 $50.

(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.

(e) 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.
13 [Enr. Com. Sub. for H. B. 4006]

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 3rd
day of April, 2012.

Governor
PRESENTED TO THE GOVERNOR

23 3 2012

Time 3:35