

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

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 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
2 designated to remove access barriers in public buildings and
3 private residences for persons with physical challenges,
4 including residential elevators, limited use/limited application
5 elevators, vertical platforms, inclined platform lifts and
6 stairway chairlifts.

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

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

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

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

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

24 (7) “Division inspector” means an employee or contractor
25 of the division who has been examined and issued a

26 certificate of competency and who only inspects elevators in
27 state owned buildings.

28 (8) “Elevator” means all the machinery, construction,
29 apparatus and equipment used in raising and lowering a car,
30 cage or platform vertically between permanent rails or guides
31 and includes all elevators, power dumbwaiters, escalators,
32 gravity elevators and other lifting or lowering apparatus
33 permanently installed between rails or guides, but does not
34 include hand operated dumbwaiters, platform lifts for loading
35 docks, manlifts of the platform type with a platform area not
36 exceeding nine hundred square inches, construction hoists or
37 other similar temporary lifting or lowering apparatus.

38 (9) “Elevator apprentice” means a person who meets the
39 requirements set forth in legislative rule promulgated
40 pursuant to this article.

41 (10) “Elevator mechanic” means a person who possesses
42 an elevator mechanic’s license in accordance with the
43 provisions of this article and who is engaged in the business
44 of erecting, constructing, installing, altering, servicing,
45 repairing or maintaining elevators or related conveyances
46 covered by this article.

47 (11) “Freight elevator” means an elevator used for
48 carrying freight and on which only the operator, by the
49 permission of the employer, is allowed to ride.

50 (12) “Inspector” means both a division inspector and a
51 private inspector.

52 (13) “License” means a license issued to an elevator
53 mechanic, accessibility technician or limited technician
54 pursuant to this article.

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

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

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

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

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

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

7 (b) A person licensed under this article shall:

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

11 (2) Be, or be employed by, a contractor licensed pursuant
12 to the provisions of article eleven, chapter twenty-one of this

13 code unless the work is performed by a historic resort hotel's
14 regular employees, for which the employees are paid regular
15 wages and not a contract price, on property owned or leased
16 by the historic resort hotel which is not intended for
17 speculative sale or lease;

18 (c) *Elevator mechanic license.* --

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

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

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

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

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

43 (d) *Accessibility technician license.* --

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

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

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

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

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

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

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

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

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

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

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

84 (4) Any person carrying an accessibility license as of July
85 1, 2012, shall receive the required endorsement to continue
86 to work on this type of equipment, and will be qualified to
87 supervise future applicants as described in this section.

88 (e) *Limited technician license.* --

89 (1) To obtain a limited technician's license an applicant
90 shall:

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

95 (B) Provide an acceptable combination of documented
96 experience, and educational credits of not less than three
97 years of recent and active experience in the elevator industry,
98 in maintenance, or service/repair or any combination thereof,
99 as verified by current and previous employers authorized to

100 do business in this state, on a sworn affidavit; and obtain a
101 score of 70% or better on a written competency examination
102 approved or provided by the division.

103 (2) A person holding a limited technician license may
104 only perform work at a historic resort hotel: *Provided*; That
105 for purposes of this section, “historic resort hotel” has the
106 same meaning ascribed to it in section two, article
107 twenty-five, chapter twenty-nine of this code.

108 (f) *Elevator apprentice.* --

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

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

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

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

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

- 129 (I) Oiling, cleaning, greasing and painting;
- 130 (II) Replacing of combplate teeth;
- 131 (III) Relamping and fixture maintenance;
- 132 (IV) Inspection, cleaning and lubricating of hoistway
133 doors, car tops, bottoms and pits; and
- 134 (V) Observing operation of equipment.

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

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

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

8 (c) Upon a proper application for renewal, the
9 commissioner shall renew a license, even if the license holder is
10 unemployed or not working in the industry at the time of
11 renewal: *Provided*, That before the license holder may engage or
12 offer to engage in the business of erecting, constructing,
13 installing, altering, servicing, repairing, or maintaining an
14 elevator or related conveyance covered by this article, the license
15 holder shall be a contractor, or be employed by a contractor
16 licensed pursuant to the provisions of section ten-a, article
17 eleven, chapter twenty-one of the code.

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

1 (a) The division shall propose rules for legislative
2 approval in accordance with the provisions of article three,

3 chapter twenty-nine-a of this code, for the implementation
4 and enforcement of the provisions of this article, which shall
5 provide:

6 (1) Standards, qualifications and procedures for
7 submitting applications, taking examinations, and issuing and
8 renewing licenses, certificates of competency and certificates
9 of operation of the three licensure classifications set forth in
10 section ten-a of this article;

11 (2) For the renewal of a license, even if the licensee is
12 unemployed or not working in the industry: *Provided*, That
13 to engage or offer to engage in the business of erecting,
14 constructing, installing, altering, servicing, repairing, or
15 maintaining an elevator or related conveyance covered by
16 this article, the licensee shall be a contractor, or be employed
17 by a contractor licensed pursuant to the provisions of section
18 ten-a, article eleven, chapter twenty-one of the code;

19 (3) Qualifications and supervision requirements for
20 elevator apprentices;

21 (4) Provisions for the granting of licenses without
22 examination, to applicants who present satisfactory evidence
23 of having the expertise required to perform work as defined
24 in this article and who apply for licensure on or before July
25 1, 2010: *Provided*, That if a license issued under the
26 authority of this subsection subsequently lapses, the applicant
27 may, at the discretion of the commissioner, be subject to all
28 licensure requirements, including the examination;

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

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

38 (7) Continuing education requirements;

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

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

46 (10) Enforcement procedures; and

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

49 (b) The rules proposed for promulgation pursuant to
50 subsection (a) of this section shall establish the amount of any
51 fee authorized pursuant to the provisions of this article:
52 *Provided*, That in no event may the fees established for the
53 issuance of certificates of operation exceed \$50.

54 (c) All fees collected pursuant to the provisions of this
55 article shall be deposited in an appropriated special revenue
56 account hereby created in the State Treasury known as the
57 “Elevator Safety Fund” and expended for the implementation
58 and enforcement of this article: *Provided*, That amounts
59 collected which are found from time to time to exceed funds
60 needed for the purposes set forth in this article may be
61 transferred to other accounts or funds and redesignated for
62 other purposes by appropriation of the Legislature.

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

67 (e) The commissioner and his or her deputy
68 commissioner or any compliance officer of the division as
69 authorized by the commissioner may consult with
70 engineering authorities and organizations concerned with
71 standard safety codes, rules and regulations governing the
72 operation, maintenance, servicing, construction, alteration,
73 installation and the qualifications which are adequate,
74 reasonable and necessary for the elevator mechanic and
75 inspector.

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 _____ this the _____
day of _____, 2012.

Governor