

HB 4038

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SECRETARY OF STATE

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

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H. B. 4038

WEST VIRGINIA
LEGISLATURE
OFFICE OF THE CLERK
STATE HOUSE
CHARLESTON, WEST VIRGINIA

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

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

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

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

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

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

22 (7) "Elevator" means all the machinery, construction,
23 apparatus and equipment used in raising and lowering a car,
24 cage or platform vertically between permanent rails or guides
25 and includes all elevators, power dumbwaiters, escalators,
26 gravity elevators and other lifting or lowering apparatus
27 permanently installed between rails or guides, but does not
28 include hand operated dumbwaiters, manlifts of the platform

29 type with a platform area not exceeding nine hundred square
30 inches, construction hoists or other similar temporary lifting
31 or lowering apparatus.

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

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

41 (10) "Freight elevator" means an elevator used for
42 carrying freight and on which only the operator, by the
43 permission of the employer, is allowed to ride.

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

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

48 (13) "Limited use/limited access elevator" means a
49 passenger elevator of which use is limited by size, capacity,
50 rise and speed, and access is limited by its location, by the
51 requirement of a key for its operation or by other restriction.

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

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

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

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

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

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

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

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

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

§21-3C-7. Safety equipment.

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

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

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

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

1 (a) On and after the first day of January, two thousand
2 ten, no person may engage or offer to engage in the business
3 of erecting, constructing, installing, altering, servicing,
4 repairing or maintaining elevators or related conveyances
5 covered by this article in this state, unless he or she has a
6 license issued by the Commissioner of Labor in accordance
7 with the provisions of this article.

8 (b) A person licensed under this article must:

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

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

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

§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;

10 (2) Qualifications and supervision requirements for
11 elevator apprentices;

12 (3) Provisions for the granting of licenses without
13 examination, to applicants who present satisfactory evidence
14 of having the expertise required to perform work as defined
15 in this article and who apply for licensure on or before the
16 first day of July, two thousand ten: *Provided*, That if a
17 license issued under the authority of this subsection
18 subsequently lapses, the applicant may, at the discretion of
19 the Commissioner, be subject to all licensure requirements,
20 including the examination;

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

23 stoppage when the number of persons in the state holding
24 licenses issued pursuant to this article is insufficient to cope
25 with the emergency;

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

30 (6) Continuing education requirements;

31 (7) Reciprocity provisions;

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

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

39 (10) Enforcement procedures; and

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

42 (b) The rules proposed for promulgation pursuant to
43 subsection (a) of this section shall establish the amount of
44 any fee authorized pursuant to the provisions of this article:
45 *Provided*, That in no event may the fees established for the
46 issuance of certificates of operation exceed fifty dollars.

47 (c) All fees collected pursuant to the provisions of this
48 article shall be deposited in an appropriated special revenue
49 account hereby created in the State Treasury known as the

50 "Elevator Safety Fund" and expended for the implementation
51 and enforcement of this article: *Provided*, That amounts
52 collected which are found from time to time to exceed funds
53 needed for the purposes set forth in this article may be
54 transferred to other accounts or funds and redesignated for
55 other purposes by appropriation of the Legislature.

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

60 (e) The Commissioner and his or her Deputy
61 Commissioner or any compliance officer of the Division as
62 authorized by the Commissioner may consult with
63 engineering authorities and organizations concerned with
64 standard safety codes, rules and regulations governing the
65 operation, maintenance, servicing, construction, alteration,
66 installation and the qualifications which are adequate,
67 reasonable and necessary for the elevator mechanic and
68 inspector.

§21-3C-12. Penalties.

1 (a) On and after the first day of January, two thousand
2 ten, the Commissioner may issue a cease and desist order to
3 any person engaging in the business of erecting, constructing,
4 installing, altering, servicing, repairing or maintaining
5 elevators or related conveyances covered by this article in
6 this state without a license, or inspecting elevators or related
7 conveyances covered by this article without a certificate of
8 competency, or operating an elevator or related conveyance
9 covered by this article without a certificate of operation.

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

13 (1) For the first offense, a fine of not less than two
14 hundred dollars nor more than one thousand dollars;

15 (2) For the second offense, a fine of not less than five
16 hundred dollars nor more than two thousand dollars, or
17 confinement in jail for not more than six months, or both;

18 (3) For the third and subsequent offenses, a fine of not
19 less than one thousand dollars nor more than five thousand
20 dollars, and confinement in jail for not less than thirty days
21 nor more than one year.

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

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

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

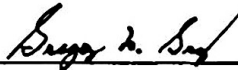

Chairman Senate Committee

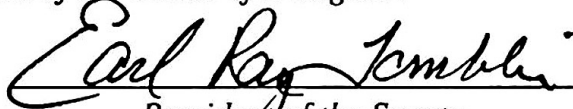

Chairman House Committee

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

PRESENTED TO THE
GOVERNOR

MAR 20 2008

Time 2:10 pm