

HOUSE BILL 613

E4

9lr1450

By: **Delegate Stifler**

Introduced and read first time: February 6, 2009

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety - Elevators - Inspections**

3 FOR the purpose of requiring that a State inspector make certain inspections relating
4 to elevators and perform quality control monitoring of inspections by certain
5 third-party qualified elevator inspectors; requiring an owner of an elevator to
6 hire a third-party qualified elevator inspector to conduct certain inspections
7 required by the Safety Code for elevator units; requiring an inspection by a
8 third-party qualified elevator inspector to ensure that the elevator unit
9 complies with the Safety Code and other regulations adopted by the
10 Commissioner of Labor and Industry; requiring each elevator unit in the State
11 to have a certain periodic annual inspection by a State inspector or by a
12 third-party qualified elevator inspector; altering the procedures for issuing
13 certain citations and assessing certain penalties; requiring the Commissioner to
14 issue a certain citation under certain circumstances; requiring an owner who is
15 issued a certain citation to post the citation or a copy of the citation in a certain
16 manner; requiring the Commissioner to send by certified mail to the owner a
17 certain notice within a reasonable time after issuance of a certain citation,
18 authorizing an owner to request a hearing on the citation, within a certain
19 period after receiving the notice; providing that a citation and penalties become
20 a final order if a hearing is not requested; authorizing the Commissioner to
21 delegate to the Office of Administrative Hearings the authority to hold a certain
22 hearing and issue certain rulings; providing that a certain decision of an
23 administrative law judge shall become a final order of the Commissioner under
24 certain circumstances; requiring the Commissioner to issue a certain order
25 under certain circumstances; authorizing the Commissioner to assess and
26 collect a certain civil penalty under certain circumstances; requiring the
27 Commissioner to consider certain elements in determining a certain penalty;
28 authorizing the Commissioner to assess and collect double administrative
29 penalties on making a certain determination; authorizing the Commissioner to
30 impose a certain penalty on an owner for failure to correct a certain violation;
31 requiring a certain civil penalty to be paid into the General Fund of the State;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 making certain technical changes; and generally relating to the inspection of
2 elevators.

3 BY repealing and reenacting, without amendments,
4 Article – Public Safety
5 Section 12–801(a) and (r) and 12–814.1
6 Annotated Code of Maryland
7 (2003 Volume and 2008 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Public Safety
10 Section 12–809, 12–812, and 12–814
11 Annotated Code of Maryland
12 (2003 Volume and 2008 Supplement)

13 BY adding to
14 Article – Public Safety
15 Section 12–814.2 and 12–814.3
16 Annotated Code of Maryland
17 (2003 Volume and 2008 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Public Safety**

21 12–801.

22 (a) In this subtitle the following words have the meanings indicated.

23 (r) “Third–party qualified elevator inspector” means an inspector who:

24 (1) meets the qualifications, insurance requirements, and procedures
25 established by the Commissioner; and

26 (2) is certified by an organization accredited by the American Society
27 of Mechanical Engineers in accordance with the American National
28 Standard/American Society of Mechanical Engineers Safety Code for Elevators,
29 Dumbwaiters, Escalators, and Moving Walks, known as ANSI A17.1–1971, and all
30 subsequent amendments, and any related consensus standards.

31 12–809.

32 (a) [Except as provided in subsection (d) of this section, each inspection
33 required by Part II of this subtitle shall be done by a State inspector.] **A STATE**
34 **INSPECTOR SHALL MAKE THE FOLLOWING INSPECTIONS:**

1 **(1) FINAL ACCEPTANCE INSPECTION OF ALL NEW ELEVATOR**
2 **UNITS PRIOR TO ISSUANCE OF FIRST CERTIFICATE;**

3 **(2) INVESTIGATION OF ACCIDENTS AND COMPLAINTS;**

4 **(3) FOLLOW-UP INSPECTIONS TO CONFIRM CORRECTIVE ACTION;**

5 **(4) FINAL ACCEPTANCE INSPECTION OF THE MODERNIZATION OR**
6 **ALTERATION OF AN ELEVATOR UNIT;**

7 **(5) A COMPREHENSIVE 5-YEAR INSPECTION AS DEFINED BY**
8 **REGULATION;**

9 **(6) EXCEPT AS PROVIDED BY § 12-807(B) OF THIS SUBTITLE,**
10 **INSPECTIONS OF ELEVATOR UNITS OWNED BY THE STATE OR A POLITICAL**
11 **SUBDIVISION; AND**

12 **(7) QUALITY CONTROL MONITORING OF INSPECTIONS**
13 **CONDUCTED BY THIRD-PARTY QUALIFIED ELEVATOR INSPECTORS.**

14 (b) (1) A contractor, owner, or lessee shall provide the Commissioner with
15 at least 60 days' notice of a requested inspection.

16 (2) If a contractor, owner, or lessee provides the Commissioner with
17 less than 60 days' notice of a requested inspection that will be conducted by a State
18 inspector, the Commissioner shall schedule the inspection at the convenience of the
19 State subject to the availability of State resources.

20 (c) (1) For all inspections conducted by a State inspector, the contractor,
21 owner, or lessee of an elevator unit shall pay a fee for an inspection under § 12-810(d)
22 or § 12-812(d)(3) of this subtitle at the following rate:

23 (i) half day (up to 4 hours), not to exceed \$250; or

24 (ii) full day (up to 8 hours), not to exceed \$500.

25 (2) Each fee collected under this subsection shall be paid into the
26 Elevator Safety Review Board Fund established under this subtitle.

27 (3) A contractor, owner, or lessee who notifies the Commissioner at
28 least 24 hours in advance of a scheduled inspection that the elevator unit does not
29 comply with the requirements of Part II of this subtitle may not be charged a fee
30 under paragraph (1) of this subsection.

1 (d) (1) [Periodic annual no-load test inspections of elevator units required
2 by Part II of this subtitle and the enforcement of the Safety Code for elevator units
3 shall comply with regulations adopted by the Commissioner under this subsection.

4 (2) The Commissioner shall authorize inspections of periodic annual
5 no-load tests of elevator units to be conducted by third-party qualified elevator
6 inspectors.] **AN OWNER SHALL HIRE A THIRD-PARTY QUALIFIED ELEVATOR
7 INSPECTOR TO CONDUCT ALL PERIODIC ANNUAL INSPECTIONS THAT ARE
8 REQUIRED BY THE SAFETY CODE.**

9 (2) **AN INSPECTION BY A THIRD-PARTY QUALIFIED ELEVATOR
10 INSPECTOR SHALL ENSURE THAT THE ELEVATOR UNIT COMPLIES WITH THE
11 SAFETY CODE AND OTHER REGULATIONS ADOPTED BY THE COMMISSIONER
12 UNDER PART II OF THIS SUBTITLE.**

13 (3) The Commissioner shall establish qualifications, insurance
14 requirements, and procedures based on nationally accepted standards that the
15 Commissioner considers necessary to register third-party qualified elevator inspectors
16 under Part II of this subtitle.

17 (4) [When the Commissioner authorizes a third-party qualified
18 elevator inspector to conduct a periodic annual no-load test inspection, the inspection
19 shall ensure that the elevator unit complies with the Safety Code and any other
20 regulation adopted by the Commissioner under Part II of this subtitle.

21 (5) Any fees collected by the Commissioner to register third-party
22 qualified elevator inspectors shall be paid into the Elevator Safety Review Board Fund
23 established under this subtitle.

24 12-812.

25 (a) A certificate is valid for the period indicated on the certificate.

26 (b) [(1) Except as provided in § 12-809(d) of this subtitle, the
27 Commissioner shall conduct an inspection of each elevator unit at time intervals set
28 forth in regulations adopted under this subtitle.

29 (2) The time intervals shall protect the public safety, taking into
30 consideration the design, type, age, and operating characteristics of the elevator unit.]
31 **EACH ELEVATOR UNIT IN THE STATE SHALL HAVE A PERIODIC ANNUAL
32 INSPECTION BY A STATE INSPECTOR AS PROVIDED FOR IN § 12-809(A)(6) OF
33 THIS SUBTITLE OR BY A THIRD-PARTY QUALIFIED ELEVATOR INSPECTOR AS
34 PROVIDED FOR IN § 12-809(D) OF THIS SUBTITLE.**

35 (c) Before scheduling an inspection with the Commissioner or a third-party
36 qualified elevator inspector, the contractor, owner, or lessee of an elevator unit shall:

1 (1) ensure that the elevator unit is operated, inspected, and repaired
2 in accordance with Part II of this subtitle and the regulations adopted under Part II of
3 this subtitle; and

4 (2) make inspection, maintenance, and repair records available to the
5 inspector charged with inspecting the elevator unit.

6 (d) (1) When an inspector conducts an inspection and the elevator unit
7 fails the inspection, the inspector shall issue an inspection checklist that specifies the
8 corrections required.

9 (2) The inspection checklist shall be on a form provided by the
10 Commissioner and shall specify the requirements for compliance with the Safety Code
11 and other regulations adopted by the Commissioner.

12 (3) If a State inspector [is conducting the inspection and] **CONDUCTS**
13 a follow-up inspection [is required] to ensure compliance with the corrections
14 specified on the inspection checklist, the contractor, owner, or lessee shall pay a fee in
15 accordance with § 12-809 of this subtitle.

16 12-814.

17 (a) When an inspection by a State inspector discloses that an elevator unit is
18 in unsafe condition so that its continued operation will violate the Safety Code, or any
19 other regulation adopted by the Commissioner under Part II of this subtitle, a citation
20 may be issued and penalties may be assessed in accordance with [§§ 5-212 and 5-213
21 of the Labor and Employment Article] **§§ 12-814.2 AND 12-814.3 OF THIS**
22 **SUBTITLE.**

23 (b) (1) When an inspection by a third-party qualified elevator inspector
24 discloses that an elevator unit is in unsafe condition so that its continued operation
25 will violate the Safety Code, or any other regulation adopted by the Commissioner
26 under Part II of this subtitle, the third-party qualified elevator inspector shall notify
27 the Commissioner immediately.

28 (2) On notification, the Commissioner shall conduct an inspection of
29 the unsafe condition to determine whether to issue a citation and assess penalties in
30 accordance with [§§ 5-212 and 5-213 of the Labor and Employment Article] **§§**
31 **12-814.2 AND 12-814.3 OF THIS SUBTITLE.**

32 12-814.1.

33 (a) The Commissioner may prohibit use of an elevator unit after
34 determining, based on an inspection, that:

35 (1) the elevator unit violates § 12-806 of this subtitle; or

1 (2) there is a substantial probability that death or serious physical
2 harm could result from continued use of the elevator unit.

3 (b) The Commissioner shall issue a written notice prohibiting use of the
4 elevator unit to the contractor, owner, lessee, or agent in charge of the elevator unit.

5 (c) A copy of the notice:

6 (1) shall be attached to the elevator unit; and

7 (2) may not be removed until a State inspector determines that the
8 elevator unit complies with this subtitle.

9 (d) Use of the elevator unit is prohibited while a notice is posted on the
10 elevator unit.

11 (e) A person aggrieved by the decision to prohibit use of an elevator unit may
12 bring an action to modify or vacate the decision on the ground that it is unlawful or
13 unreasonable.

14 (f) An action under this section shall be brought in the circuit court for the
15 county where the elevator unit is located.

16 (g) In a proceeding under this section, a court may not stay an order of the
17 Commissioner unless:

18 (1) the court gives the Commissioner notice and an opportunity for a
19 hearing; and

20 (2) the aggrieved person posts security or meets any other condition
21 that the court considers proper.

22 **12-814.2.**

23 **(A) IF AFTER AN INSPECTION OR INVESTIGATION, THE COMMISSIONER**
24 **DETERMINES THAT, WITHIN THE IMMEDIATELY PRECEDING 6 MONTHS, AN**
25 **ELEVATOR UNIT IS IN VIOLATION OF THE SAFETY CODE OR ANOTHER**
26 **REGULATION ADOPTED BY THE COMMISSIONER UNDER PART II OF THIS**
27 **SUBTITLE, THE COMMISSIONER SHALL ISSUE A CITATION TO THE OWNER.**

28 **(B) EACH CITATION UNDER THIS SECTION SHALL:**

29 **(1) BE IN WRITING;**

1 (2) DESCRIBE, WITH PARTICULARITY, THE NATURE OF THE
2 ALLEGED VIOLATION;

3 (3) REFERENCE THE PROVISION OF THE SAFETY CODE OR
4 REGULATION THAT IS ALLEGED TO BE IN VIOLATION; AND

5 (4) SET A REASONABLE PERIOD OF TIME FOR ABATEMENT AND
6 CORRECTION OF THE ALLEGED VIOLATION.

7 (C) AN OWNER WHO IS ISSUED A CITATION SHALL POST THE CITATION
8 OR A COPY OF THE CITATION CONSPICUOUSLY AT OR NEAR THE ELEVATOR UNIT
9 ALLEGED TO BE IN VIOLATION.

10 (D) WITHIN A REASONABLE TIME AFTER ISSUANCE OF A CITATION, THE
11 COMMISSIONER SHALL SEND BY CERTIFIED MAIL TO THE OWNER:

12 (1) NOTICE OF THE VIOLATION WITH A COPY OF THE CITATION
13 AND PROPOSED PENALTY; AND

14 (2) NOTICE OF THE OPPORTUNITY TO REQUEST A HEARING.

15 (E) WITHIN 15 DAYS AFTER AN OWNER RECEIVES A NOTICE UNDER
16 SUBSECTION (D) OF THIS SECTION, THE OWNER MAY SUBMIT A WRITTEN
17 REQUEST FOR A HEARING ON THE CITATION AND PROPOSED PENALTY.

18 (F) IF A HEARING IS NOT REQUESTED WITHIN 15 DAYS, THE CITATION,
19 INCLUDING ANY PENALTIES, SHALL BECOME A FINAL ORDER OF THE
20 COMMISSIONER.

21 (G) IF THE OWNER REQUESTS A HEARING, THE COMMISSIONER MAY
22 DELEGATE TO THE OFFICE OF ADMINISTRATIVE HEARINGS THE AUTHORITY TO
23 HOLD A HEARING AND ISSUE PROPOSED FINDINGS OF FACT, CONCLUSIONS OF
24 LAW, AND AN ORDER IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE
25 STATE GOVERNMENT ARTICLE.

26 (H) A DECISION OF AN ADMINISTRATIVE LAW JUDGE ISSUED IN
27 ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT
28 ARTICLE SHALL BECOME A FINAL ORDER OF THE COMMISSIONER UNLESS,
29 WITHIN 15 DAYS AFTER THE ISSUANCE OF THE PROPOSED DECISION:

30 (1) THE COMMISSIONER ORDERS A REVIEW OF THE PROPOSED
31 DECISION; OR

1 **(2) AN OWNER SUBMITS TO THE COMMISSIONER A WRITTEN**
2 **REQUEST FOR A REVIEW OF THE PROPOSED DECISION.**

3 **(I) AFTER REVIEW OF THE PROPOSED ORDER UNDER SUBSECTION (H)**
4 **OF THIS SECTION, WHETHER OR NOT A HEARING ON THE RECORD IS HELD, THE**
5 **COMMISSIONER SHALL ISSUE AN ORDER THAT, ON THE BASIS OF FINDINGS OF**
6 **FACT AND CONCLUSIONS OF LAW, AFFIRMS, MODIFIES, OR VACATES THE**
7 **PROPOSED DECISION.**

8 **(J) AN ORDER OF THE COMMISSIONER UNDER SUBSECTION (I) OF THIS**
9 **SECTION IS THE FINAL ADMINISTRATIVE ORDER.**

10 **12-814.3.**

11 **(A) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT**
12 **AN OWNER VIOLATED THE SAFETY CODE OR A REGULATION ADOPTED BY THE**
13 **COMMISSIONER UNDER PART II OF THIS SUBTITLE, THE COMMISSIONER MAY**
14 **ASSESS AND COLLECT A CIVIL PENALTY OF UP TO \$5,000 FOR EACH ELEVATOR**
15 **UNIT IN VIOLATION OF THE SAFETY CODE OR REGULATIONS.**

16 **(B) IN DETERMINING THE AMOUNT OF THE PENALTY, THE**
17 **COMMISSIONER SHALL CONSIDER:**

18 **(1) THE GRAVITY OF THE VIOLATION;**

19 **(2) THE OWNER'S GOOD FAITH; AND**

20 **(3) THE OWNER'S HISTORY OF VIOLATIONS UNDER THIS**
21 **SUBTITLE.**

22 **(C) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT**
23 **AN OWNER WILLFULLY OR REPEATEDLY VIOLATED THE SAFETY CODE OR A**
24 **REGULATION ADOPTED BY THE COMMISSIONER UNDER PART II OF THIS**
25 **SUBTITLE, THE COMMISSIONER MAY ASSESS AND COLLECT DOUBLE THE**
26 **ADMINISTRATIVE PENALTIES SET FORTH IN SUBSECTION (A) OF THIS SECTION.**

27 **(D) IF, AFTER THE ISSUANCE OF A FINAL ORDER AFFIRMING A**
28 **VIOLATION OF THE SAFETY CODE OR A REGULATION ADOPTED BY THE**
29 **COMMISSIONER UNDER PART II OF THIS SUBTITLE, AN OWNER FAILS TO**
30 **CORRECT THE VIOLATION WITHIN 10 DAYS, THE COMMISSIONER MAY IMPOSE A**
31 **CIVIL PENALTY, NOT EXCEEDING \$1,000 FOR EACH DAY A VIOLATION**
32 **CONTINUES, AGAINST THE OWNER.**

1 **(E) EACH CIVIL PENALTY SHALL BE PAID INTO THE GENERAL FUND OF**
2 **THE STATE.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 July 1, 2009.