

HOUSE BILL 613

E4

9lr1450

By: **Delegate Stifler**

Introduced and read first time: February 6, 2009

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted with floor amendments

Read second time: March 5, 2009

CHAPTER _____

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 establish, by regulation, procedures for the issuance of a warning notice instead
22 of a citation for a certain de minimus violation; authorizing the Commissioner to
23 delegate to the Office of Administrative Hearings the authority to hold a certain
24 hearing and issue certain rulings; providing that a certain decision of an
25 administrative law judge shall become a final order of the Commissioner under
26 certain circumstances; requiring the Commissioner to issue a certain order

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 under certain circumstances; authorizing the Commissioner to assess and
 2 collect a certain civil penalty under certain circumstances; requiring the
 3 Commissioner to consider certain elements in determining a certain penalty;
 4 authorizing the Commissioner to assess and collect double administrative
 5 penalties on making a certain determination; authorizing the Commissioner to
 6 impose a certain penalty on an owner for failure to correct a certain violation;
 7 requiring a certain civil penalty to be paid into the General Fund of the State;
 8 making certain technical changes; and generally relating to the inspection of
 9 elevators.

10 BY repealing and reenacting, without amendments,
 11 Article – Public Safety
 12 Section 12–801(a) and (r) and 12–814.1
 13 Annotated Code of Maryland
 14 (2003 Volume and 2008 Supplement)

15 BY repealing and reenacting, with amendments,
 16 Article – Public Safety
 17 Section 12–809, 12–812, and 12–814
 18 Annotated Code of Maryland
 19 (2003 Volume and 2008 Supplement)

20 BY adding to
 21 Article – Public Safety
 22 Section 12–814.2 and 12–814.3
 23 Annotated Code of Maryland
 24 (2003 Volume and 2008 Supplement)

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

27 **Article – Public Safety**

28 12–801.

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

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

31 (1) meets the qualifications, insurance requirements, and procedures
 32 established by the Commissioner; and

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

1 12-809.

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

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

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

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

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

11 (5) **A COMPREHENSIVE 5-YEAR INSPECTION AS DEFINED BY
12 REGULATION;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 12-812.

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

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

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

1 **THIS SUBTITLE OR BY A THIRD-PARTY QUALIFIED ELEVATOR INSPECTOR AS**
2 **PROVIDED FOR IN § 12-809(D) OF THIS SUBTITLE.**

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

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

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

10 (d) (1) When an inspector conducts an inspection and the elevator unit
11 fails the inspection, the inspector shall issue an inspection checklist that specifies the
12 corrections required.

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

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

20 12-814.

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

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

32 (2) On notification, the Commissioner shall conduct an inspection of
33 the unsafe condition to determine whether to issue a citation and assess penalties in
34 accordance with [§§ 5-212 and 5-213 of the Labor and Employment Article] §§
35 **12-814.2 AND 12-814.3 OF THIS SUBTITLE.**

36 12-814.1.

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

3 (1) the elevator unit violates § 12–806 of this subtitle; or

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

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

8 (c) A copy of the notice:

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

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

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

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

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

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

21 (1) the court gives the Commissioner notice and an opportunity for a
22 hearing; and

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

25 **12–814.2.**

26 (A) ~~IF SUBJECT TO SUBSECTION (K) OF THIS SECTION, IF, AFTER AN~~
27 ~~INSPECTION OR INVESTIGATION, THE COMMISSIONER DETERMINES THAT,~~
28 ~~WITHIN THE IMMEDIATELY PRECEDING 6 MONTHS, AN ELEVATOR UNIT IS IN~~
29 ~~VIOLATION OF THE SAFETY CODE OR ANOTHER REGULATION ADOPTED BY THE~~
30 ~~COMMISSIONER UNDER PART II OF THIS SUBTITLE, THE COMMISSIONER SHALL~~
31 ~~ISSUE A CITATION TO THE OWNER.~~

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

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

3 **(2) DESCRIBE, WITH PARTICULARITY, THE NATURE OF THE**
4 **ALLEGED VIOLATION;**

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

7 **(4) SET A REASONABLE PERIOD OF TIME FOR ABATEMENT AND**
8 **CORRECTION OF THE ALLEGED VIOLATION.**

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

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

14 **(1) NOTICE OF THE VIOLATION WITH A COPY OF THE CITATION**
15 **AND PROPOSED PENALTY; AND**

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

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

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

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

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

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

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

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

10 (J) AN ORDER OF THE COMMISSIONER UNDER SUBSECTION (I) OF THIS
11 SECTION IS THE FINAL ADMINISTRATIVE ORDER.

12 (K) THE COMMISSIONER MAY ESTABLISH, BY REGULATION,
13 PROCEDURES FOR THE ISSUANCE OF A WARNING NOTICE INSTEAD OF A
14 CITATION FOR A DE MINIMUS VIOLATION THAT HAS NO DIRECT OR IMMEDIATE
15 RELATIONSHIP TO HEALTH OR SAFETY.

16 12-814.3.

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

22 (B) IN DETERMINING THE AMOUNT OF THE PENALTY, THE
23 COMMISSIONER SHALL CONSIDER:

24 (1) THE GRAVITY OF THE VIOLATION;

25 (2) THE OWNER'S GOOD FAITH; AND

26 (3) THE OWNER'S HISTORY OF VIOLATIONS UNDER THIS
27 SUBTITLE.

28 (C) IF, AFTER INVESTIGATION, THE COMMISSIONER DETERMINES THAT
29 AN OWNER WILLFULLY OR REPEATEDLY VIOLATED THE SAFETY CODE OR A
30 REGULATION ADOPTED BY THE COMMISSIONER UNDER PART II OF THIS
31 SUBTITLE, THE COMMISSIONER MAY ASSESS AND COLLECT DOUBLE THE
32 ADMINISTRATIVE PENALTIES SET FORTH IN SUBSECTION (A) OF THIS SECTION.

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

7 (E) EACH CIVIL PENALTY SHALL BE PAID INTO THE GENERAL FUND OF
8 THE STATE.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.