

CHAPTER 145

(House Bill 613)

AN ACT concerning

Public Safety – Elevators – Inspections

FOR the purpose of requiring that a State inspector make certain inspections relating to elevators and perform quality control monitoring of inspections by certain third-party qualified elevator inspectors; requiring an owner of an elevator to hire a third-party qualified elevator inspector to conduct certain inspections required by the Safety Code for elevator units; requiring an inspection by a third-party qualified elevator inspector to ensure that the elevator unit complies with the Safety Code and other regulations adopted by the Commissioner of Labor and Industry; requiring each elevator unit in the State to have a certain periodic annual inspection by a State inspector or by a third-party qualified elevator inspector; altering the procedures for issuing certain citations and assessing certain penalties; requiring the Commissioner to issue a certain citation under certain circumstances; requiring an owner who is issued a certain citation to post the citation or a copy of the citation in a certain manner; requiring the Commissioner to send by certified mail to the owner a certain notice within a reasonable time after issuance of a certain citation, authorizing an owner to request a hearing on the citation, within a certain period after receiving the notice; providing that a citation and penalties become a final order if a hearing is not requested; authorizing the Commissioner to establish, by regulation, procedures for the issuance of a warning notice instead of a citation for a certain de minimus violation; authorizing the Commissioner to delegate to the Office of Administrative Hearings the authority to hold a certain hearing and issue certain rulings; providing that a certain decision of an administrative law judge shall become a final order of the Commissioner under certain circumstances; requiring the Commissioner to issue a certain order under certain circumstances; authorizing the Commissioner to assess and collect a certain civil penalty under certain circumstances; requiring the Commissioner to consider certain elements in determining a certain penalty; authorizing the Commissioner to assess and collect double administrative penalties on making a certain determination; authorizing the Commissioner to impose a certain penalty on an owner for failure to correct a certain violation; requiring a certain civil penalty to be paid into the General Fund of the State; making certain technical changes; and generally relating to the inspection of elevators.

BY repealing and reenacting, without amendments,
Article – Public Safety
Section 12-801(a) and (r) and 12-814.1

Annotated Code of Maryland
(2003 Volume and 2008 Supplement)

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

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

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

Article – Public Safety

12–801.

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

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

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

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

12–809.

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

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

(2) INVESTIGATION OF ACCIDENTS AND COMPLAINTS;

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Commissioner shall authorize inspections of periodic annual no-load tests of elevator units to be conducted by third-party qualified elevator

inspectors.] **AN OWNER SHALL HIRE A THIRD-PARTY QUALIFIED ELEVATOR INSPECTOR TO CONDUCT ALL PERIODIC ANNUAL INSPECTIONS THAT ARE REQUIRED BY THE SAFETY CODE.**

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

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

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

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

12-812.

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

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

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

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

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

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

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

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

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

12-814.

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

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

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

12-814.1.

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

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

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

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

(c) A copy of the notice:

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

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

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

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

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

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

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

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

12-814.2.

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

(B) EACH CITATION UNDER THIS SECTION SHALL:

(1) BE IN WRITING;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12-814.3.

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

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

- (1) THE GRAVITY OF THE VIOLATION;**
- (2) THE OWNER'S GOOD FAITH; AND**
- (3) THE OWNER'S HISTORY OF VIOLATIONS UNDER THIS SUBTITLE.**

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

(D) IF, AFTER THE ISSUANCE OF A FINAL ORDER AFFIRMING A VIOLATION OF THE SAFETY CODE OR A REGULATION ADOPTED BY THE COMMISSIONER UNDER PART II OF THIS SUBTITLE, AN OWNER FAILS TO CORRECT THE VIOLATION WITHIN 10 DAYS, THE COMMISSIONER MAY IMPOSE A

CIVIL PENALTY, NOT EXCEEDING \$1,000 FOR EACH DAY A VIOLATION CONTINUES, AGAINST THE OWNER.

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

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

Approved by the Governor, April 14, 2009.