House Engrossed

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 66

HOUSE BILL 2228

AN ACT

AMENDING SECTIONS 23-491, 23-491.02 AND 23-491.05, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 2, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-491.16; RELATING TO ELEVATOR SAFETY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-491, Arizona Revised Statutes, is amended to read:

23-491. Definitions

In this article, unless the context otherwise requires:

1. "Authorized representative" means the elevator chief and elevator inspector employed by the division.

2. "Board" means the elevator advisory board established to assist the commission in drafting standards and regulations.

3. "CERTIFICATE" MEANS A CERTIFICATE OF INSPECTION ISSUED BY THE DIVISION.

~~3.~~ 4. "Commission" means the industrial commission of Arizona.

~~4.~~ 5. "Conveyance" means an elevator, dumbwaiter, escalator, moving walk, manlift, personnel hoist, material hoist, stage lift and special purpose personnel elevator, excluding conveyances located at mines and subject to regulation and inspection by the state mine inspector pursuant to ~~the provisions of~~ title 27, chapter 3.

~~5.~~ 6. "Director" means the director of the division of occupational safety and health.

~~6.~~ 7. "Division" means the division of occupational safety and health of the industrial commission.

~~7.~~ 8. "Dumbwaiter" means a hoisting and lowering mechanism with a car of limited capacity and size ~~which~~ THAT moves in guides in a substantially vertical direction and THAT is used exclusively for carrying material.

~~8.~~ 9. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform ~~which~~ THAT moves in guides in substantially vertical direction and ~~which~~ THAT serves two or more floors of a building or structure.

10. "ELEVATOR COMPANY" MEANS A PERSON THAT IS ENGAGED IN THE BUSINESS OF ERECTING, CONSTRUCTING, INSTALLING, ALTERING, SERVICING, REPAIRING OR MAINTAINING CONVEYANCES.

~~9.~~ 11. "Escalator" means a power driven, inclined, continuous stairway used for raising or lowering passengers.

~~10.~~ 12. "Interested party" means the commission and its agents and the owner or operator who has been issued a correction order.

~~11.~~ 13. "Manlift" means a device consisting of a power driven endless belt moving in one direction only and provided with steps or platforms and attached handholds for the transportation of personnel from floor to floor.

~~12.~~ 14. "Material hoist" means a hoist for raising and lowering materials only and prohibiting the hoisting of persons.

~~13.~~ 15. "Moving walk" means a type of passenger carrying device on which passengers stand or walk and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted.

~~14.~~ 16. "Owner" or "operator" means an individual or organization including this state and all political subdivisions of this state who has title to, controls or has the duty to control the operation of one or more conveyances, but shall not include an individual or organization engaged in mining or metallurgical operations whose operation is subject to regulation and inspection by the state mine inspector pursuant to ~~the provisions of~~ title 27, chapter 3.

~~15.~~ 17. "Personnel hoist" means a mechanism for use in connection with the construction, alteration, maintenance or demolition of a building, structure or other work, used for hoisting and lowering workers and materials and equipped with a car that moves on guide members during its vertical movement. The term includes a hoistway of a personnel hoist.

18. "PRIVATE ELEVATOR INSPECTOR" MEANS AN INDIVIDUAL WHO IS AUTHORIZED BY THE COMMISSION UNDER SECTION 23-491.16 TO CONDUCT INSPECTIONS UNDER THIS ARTICLE.

~~16.~~ 19. "Special purpose personnel elevator" means a passenger, hand powered, counterweighted device or an electric powered device ~~which~~ THAT travels vertically in guides and THAT serves two or more landings.

~~17.~~ 20. "Stage lift" means a hoisting and lowering mechanism equipped with a platform ~~which~~ THAT moves in guides in a substantially vertical direction and ~~which~~ THAT serves one or more landings.

Sec. 2. Section 23-491.02, Arizona Revised Statutes, is amended to read:

23-491.02. Owner's and operator's duty

Every owner and operator of a conveyance shall:

1. Construct, furnish, maintain and provide safe and adequate devices with which to safely and properly convey or move all persons and material utilizing the services offered by the owner or operator of such device.

2. Comply with all standards and regulations issued pursuant to this article.

3. ENSURE THAT A CONVEYANCE IS INSPECTED AT ALL OF THE FOLLOWING TIMES:

(a) BEFORE PLACING A CONVEYANCE IN OPERATION AFTER THE INITIAL INSTALLATION OF THE CONVEYANCE.

(b) AFTER MODIFICATION OR ALTERATION OF A CONVEYANCE.

(c) AFTER THE INSPECTION PURSUANT TO SUBDIVISION (a), ANNUALLY OR AS OTHERWISE DIRECTED BY THE COMMISSION.

Sec. 3. Section 23-491.05, Arizona Revised Statutes, is amended to read:

23-491.05. Division powers

The division ~~shall~~ MAY:

1. Inspect conveyances ~~annually and may do so at other times~~ when deemed necessary or appropriate by the division.

2. Recommend to the commission for approval or disapproval standards and regulations and amendments to such standards and regulations.

3. Enforce, pursuant to section 23-491.09, all standards and regulations promulgated by the commission.

Sec. 4. Title 23, chapter 2, article 12, Arizona Revised Statutes, is amended by adding section 23-491.16, to read:

23-491.16. Private elevator inspector; qualifications; prohibited conduct; civil penalty

A. THE COMMISSION MAY AUTHORIZE AN INDIVIDUAL TO PERFORM INITIAL OR ANNUAL INSPECTIONS UNDER THIS ARTICLE OR ANY OTHER INSPECTION UNDER THIS ARTICLE DESIGNATED BY THE COMMISSION, IF THE INDIVIDUAL DOES ALL OF THE FOLLOWING:

1. MEETS THE QUALIFICATIONS AND INSURANCE REQUIREMENTS PRESCRIBED BY THE COMMISSION.

2. IS CERTIFIED BY AN ORGANIZATION THAT IS ACCREDITED BY A NATIONAL SOCIETY OF MECHANICAL ENGINEERS IN ACCORDANCE WITH A NATIONAL STANDARD FOR SAFETY OF ELEVATORS, DUMBWAITERS, ESCALATORS AND MOVING WALKS AS DETERMINED BY THE COMMISSION.

3. FOLLOWS THE INSPECTION PROCEDURES ESTABLISHED BY THE COMMISSION FOR PRIVATE ELEVATOR INSPECTORS.

B. A PRIVATE ELEVATOR INSPECTOR SHALL REGISTER WITH THE COMMISSION ANNUALLY AND PROVIDE PROOF OF ALL OF THE FOLLOWING WITH THE REGISTRATION:

1. COMPLETION OF AT LEAST EIGHT HOURS OF CONTINUING EDUCATION APPROVED BY THE COMMISSION.

2. THAT THE CERTIFICATION PRESCRIBED IN SUBSECTION A IS IN GOOD STANDING.

3. THAT THE PRIVATE ELEVATOR INSPECTOR IS MAINTAINING THE INSURANCE PRESCRIBED BY THE COMMISSION.

C. THE COMMISSION MAY SUSPEND OR REVOKE A PRIVATE ELEVATOR INSPECTOR'S AUTHORIZATION TO PERFORM INSPECTIONS FOR ANY REASON RELATED TO THE PERFORMANCE OF AN INSPECTION UNDER THIS ARTICLE OR FOR ANY OTHER GOOD CAUSE AS DETERMINED BY THE COMMISSION.

D. THE COMMISSION MAY IMPOSE A CIVIL PENALTY OF ONE THOUSAND DOLLARS ON A PRIVATE ELEVATOR INSPECTOR OR AN ELEVATOR COMPANY FOR EACH INSTANCE THE INSPECTOR OR COMPANY DOES ANY OF THE FOLLOWING:

1. MAKES A FALSE STATEMENT AS TO A MATERIAL MATTER IN AN APPLICATION FOR AUTHORIZATION UNDER THIS ARTICLE.

2. COMMITS FRAUD, MISREPRESENTATION OR BRIBERY IN REGARD TO CONVEYANCES OR ANY INSPECTION OR ACTION TAKEN PURSUANT TO THIS ARTICLE.

3. COMMITS A VIOLATION OF THIS ARTICLE OR THE RULES OR INSPECTION PROCEDURES ADOPTED PURSUANT TO THIS ARTICLE.

E. A PRIVATE ELEVATOR INSPECTOR SHALL NOT DO ANY OF THE FOLLOWING:

1. INSPECT A CONVEYANCE OWNED, OPERATED OR LAST SERVICED BY ANY OF THE FOLLOWING:

(a) THE PRIVATE ELEVATOR INSPECTOR.

(b) A COMPANY OWNED BY THE PRIVATE ELEVATOR INSPECTOR.

(c) A COMPANY FOR WHICH THE PRIVATE ELEVATOR INSPECTOR IS AN EMPLOYEE AT THE TIME OF THE INSPECTION.

(d) A COMPANY AFFILIATED WITH A COMPANY OWNED BY THE PRIVATE ELEVATOR INSPECTOR OR FOR WHICH THE PRIVATE ELEVATOR INSPECTOR IS AN EMPLOYEE AT THE TIME OF THE INSPECTION.

2. ENGAGE IN THE SALE OR SERVICE OF ANYTHING RELATED TO ELEVATORS.

3. CONDUCT AN INSPECTION PURSUANT TO THIS ARTICLE UNLESS THE INSPECTOR HAS THE CURRENT CERTIFICATION AND COMMISSION AUTHORIZATION PURSUANT TO SUBSECTION A.

F. THIS STATE IS NOT LIABLE FOR ANY ACT OR OMISSION OF A PRIVATE ELEVATOR INSPECTOR. THE COMMISSION IS NOT OBLIGATED TO PAY ANY FEE CHARGED OR OTHER CONSIDERATION SOUGHT BY A PRIVATE ELEVATOR INSPECTOR FOR AN INSPECTION PURSUANT TO THIS ARTICLE. THE FEE OR CONSIDERATION IS THE SOLE OBLIGATION OF THE OWNER OR OPERATOR THAT RETAINED OR CONTRACTED WITH THE PRIVATE ELEVATOR INSPECTOR.

G. THE COMMISSION SHALL COMPILE A LIST OF PRIVATE ELEVATOR INSPECTORS THAT ARE CURRENTLY AUTHORIZED PURSUANT TO SUBSECTION A. AN OWNER OR AN OPERATOR MAY HIRE A PRIVATE ELEVATOR INSPECTOR.

H. AN OWNER OR OPERATOR IS NOT RELIEVED OF THE OBLIGATIONS UNDER THIS ARTICLE BY THE USE OF A PRIVATE ELEVATOR INSPECTOR.

I. THE COMMISSION IS EXEMPT FROM THE RULE MAKING REQUIREMENTS OF TITLE 41, CHAPTER 6, IN THE ADOPTION OF PRIVATE ELEVATOR INSPECTOR QUALIFICATIONS AND INSPECTION PROCEDURES.

J. CIVIL PENALTIES AND INTEREST ASSESSED PURSUANT TO THIS SECTION ACT AS A JUDGMENT IN THE SAME MANNER AND WITH LIKE EFFECT AS IF THEY WERE A JUDGMENT OF THE SUPERIOR COURT. THE COMMISSION MAY RECOVER REASONABLE ATTORNEY FEES INCURRED IN COLLECTING ANY CIVIL PENALTY ASSESSED UNDER THIS SECTION. ALL MONIES COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE ADMINISTRATIVE FUND ESTABLISHED BY SECTION 23-1081.

APPROVED BY THE GOVERNOR APRIL 16, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 19, 2010.