STATE OF NEW YORK

5137--A

2017-2018 Regular Sessions

IN SENATE

March 9, 2017

Introduced by Sens. SAVINO, BONACIC, ADDABBO, AKSHAR, ALCANTARA, AVELLA, BAILEY, BROOKS, CARLUCCI, DILAN, FUNKE, GALLIVAN, GRIFFO, HAMILTON, HELMING, HOYLMAN, JACOBS, KAMINSKY, KENNEDY, KRUEGER, LANZA, LATIMER, LITTLE, MURPHY, ORTT, PERALTA, RITCHIE, ROBACH, SANDERS, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the state finance law, in relation to requiring the licensing of persons engaged in the design, construction, inspection, maintenance, alteration, and repair of elevators and other automated people moving devices

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The labor law is amended by adding a new article 33 to read as follows:

ARTICLE 33

ELEVATORS AND OTHER CONVEYANCES; LICENSING

Section 950. Legislative findings and declaration.
951. Application.
952. Definitions.
953. Licensing, permit, registration and compliance requirements.
954. License and permit procedure.
955. Qualifications, training and continuing education.
956. Powers of the commissioner.
957. New York state elevator safety and standards board.
958. Exempt persons.

§ 950. Legislative findings and declaration. The legislature hereby finds that the use of unsafe and defective elevators and other automated people moving conveyances may expose the public to unsafe conditions and increase the risk of injury. The legislature finds that improper design,

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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construction, maintenance and repair of such conveyances is preventable by requiring proper training of persons employed to perform work on elevators and other automated people moving conveyances and by requiring the licensing of contractors and the certification of individuals involved in elevator and other automated people moving conveyances projects.

Nothing in this article is intended to create, expand, diminish, limit, impair, or supersede any rights under current law, rule, or regulation, or resulting from a determination of a court or the national labor relations board with regard to building trades and the work of such building trade. Nor is it intended to abrogate any rights or duties under any contract with regard to building trades and the work of such building trade.

§ 951. Application. 1. The design, construction, erection, installation, inspection, testing, maintenance, alteration, service, and repair of the following equipment are covered by this article:

(a) hoisting and lowering mechanisms equipped with a car or platform which moves between two or more landings. This equipment includes, but is not limited to elevators, platform lifts and stairway chair lifts;

(b) power driven stairways and walkways for carrying persons between landings. This equipment includes, but is not limited to, escalators and moving walks;

(c) hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car. This equipment includes, but is not limited to, dumbwaiters, material lifts, and dumbwaiters with automatic transfer devices as defined in section nine hundred fifty-two of this article; and

(d) automatic guided transit vehicles on guideways with an exclusive right of way. This equipments includes, but is not limited to, automated people movers.

2. The following equipment is not covered by this article:

(a) material hoists;

(b) manlifts;

(c) mobile scaffolds, towers, and platforms;

(d) powered platforms and equipment for exterior and interior maintenance;

(e) conveyor and related equipment;

(f) cranes, derricks, hoists, hooks, jacks and slings;

(g) industrial trucks;

(h) portable equipment, except for portable escalators;

(i) tiering and piling machines used to move materials to and from storage located and operating entirely within one story;

(j) equipment for feeding or positioning materials including, but not limited to, machine tools and printing presses;

(k) skip or furnace hoists;

(l) wharf ramps;

(m) railroad car lifts or dumpers;

(n) line jacks, false cars, shafters, moving platforms and similar equipment used for installing an elevator by a contractor licensed in this state.

3. The licensing, permitting and certification provisions of this article shall not apply to the owners or lessees of private residences who design, erect, construct, install, alter, repair, service or maintain conveyances that are located or will be located in such owner or lessee's private residence. However, any person hired to design, erect,

construct, install, alter, repair, service, maintain, or perform any other work related to such conveyances must comply with the provisions of this article.

4. No license shall be required for the removal or dismantling of conveyances.

5. The provisions of this article and the rules adopted pursuant thereto shall be the minimum standard required and shall supersede any special law or local ordinance inconsistent therewith, and no local ordinance inconsistent therewith shall be adopted, but nothing herein contained shall prevent the enactment by local law or ordinance of additional requirements and restrictions.

§ 952. Definitions. As used in this article, the following terms shall have the following definitions:

1. "Automated people mover" means a guided transit mode with fully automated operation, featuring vehicles that operate on guideways with exclusive right-of-way.

2. "Board" means the New York state elevator safety and standards board established by section nine hundred fifty-seven of this article.

3. "Certificate of operation" means a document issued by the commissioner that indicates that the elevator or related conveyance has had the required safety inspection and tests and that the fees required by this article have been paid.

4. "Temporary certificate of operation" means a document issued by the commissioner which permits the temporary use of a non-compliant elevator or related conveyance by the general public for a limited time, not to exceed thirty days, while minor repairs are being completed.

5. "Conveyance" means any elevator, dumbwaiter, escalator, moving sidewalk, platform lifts, stairway chairlifts and automated people movers.

6. "Dormant elevator, dumbwaiter, or escalator" means an installation placed out of service under the following circumstances: (a) when an installation's power has been disconnected and (i) when an electric elevator, dumbwaiter, or material lift whose suspension ropes have been removed, whose car and counterweight rest at the bottom of the hoistway, and whose hoistway doors have been permanently barricaded or sealed in the closed position on the hoistway side; or (ii) a hydraulic elevator, dumbwaiter, or material lift whose car rests at the bottom of the hoistway and whose doors are permanently barricaded or sealed; or (iii) an escalator or moving walk whose entrances have been permanently barricaded; or (b) as determined by state or local law, code, rule, or regulations.

7. "Elevator" means a hoisting and lowering mechanism, equipped with a car, that moves within guides and serves two or more landings.

8. "Elevator contractor" means, a public corporation, or instrumentality of a public corporation, self-employed person, company, unincorporated association, firm, partnership, limited liability company, corporation, or any other entity, or any owner or operator of any of the foregoing entities, who possesses an elevator contractor's license in accordance with the provisions of sections nine hundred fifty-three and nine hundred fifty-four of this article and is engaged in the business of designing, erecting, constructing, installing, altering, repairing, servicing or maintaining elevators or other automated people moving conveyances covered by this article.

9. "Elevator helper/apprentice/assistant mechanic" means any person who works under the general direction of a licensed elevator mechanic.

10. "Elevator inspector" means any person who possesses an elevator inspector's license in accordance with the provisions of this article.

11. "Elevator mechanic" means any person who possesses an elevator mechanic's license in accordance with the provisions of this article.

12. "Escalator" means power-driven, inclined, continuous stairway used for raising or lowering passengers.

13. "Existing installation" means an installation that has been completed or is under construction prior to the effective date of this article.

14. "License" means a license duly issued by the commissioner, authorizing the design, erection, construction, installation, alteration, repair, service, maintenance, or inspection of elevators or other conveyances covered by this article.

15. "Elevator contractor's license" means a license which entitles the holder thereof to engage in the business of designing, erecting, constructing, installing, altering, repairing, servicing or maintaining conveyances covered by this article.

16. "Elevator inspector's license" means a license which entitles the holder thereof to engage in the business of inspecting or testing conveyances covered by this article.

17. "Elevator mechanic's license" means a license which entitles the holder thereof to install, construct, alter, service, repair, test, maintain, and perform work on conveyances or other automated people movers covered by this article.

18. "Moving walk/sidewalk" 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.

19. "Permit" means a document issued by the commissioner prior to the commencement of work that permits a conveyance to be erected, constructed, installed, or altered under plans approved by the commissioner pursuant to this article.

20. "Person" means any natural person.

21. "Private residence" means a separate dwelling or a separate apartment in a multiple dwelling, which is occupied by members of a single family unit.

22. "Repair" means reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with applicable code requirements.

23. "Alteration" means any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement, but shall not include the professional services of engineering or architecture as defined in sections seventy-two hundred one and seventy-three hundred one of the education law.

24. "Design" means the act or process of planning the repair, alteration or construction of any conveyance, but shall not include the professional services of engineering or architecture as defined in sections seventy-two hundred one and seventy-three hundred one of the education law.

25. "Construction" means the act or process of constructing any conveyance.

26. "Inspection" means a critical examination, observation or evaluation of quality and code compliance of any conveyance.

27. "Testing" means a process or trial of operation of any conveyance.

28. "Maintenance" means a process of routine examination, lubrication, cleaning, and adjustment of parts, components, and/or subsystems for the

purpose of ensuring performance in accordance with any applicable code requirements.

29. "Service or servicing" means a service call or other unscheduled visit, not including routine maintenance or a repair, from a licensed elevator mechanic to troubleshoot, adjust or repair an improperly functioning or an otherwise shut down conveyance.

30. "Temporarily dormant elevator, dumbwaiter, or escalator" means an installation temporarily placed out of service under the following circumstances: (a) (i) when such installation's power supply has been disconnected; and (ii) the car is parked and any doors are closed and latched; and (iii) a wire seal is installed on the mainline disconnect switch by a licensed elevator inspector; or (b) as determined by state or local law, code, rule, or regulation.

31. "Erect" means to vertically construct or connect any conveyance or part or system thereof.

32. "Installation" means to place or fix any conveyance or part or system thereof, in position for operation.

Temporarily dormant installations shall not be used until such installation has been restored to a safe running order and is in condition suitable for use in accordance with all applicable laws, codes, rules and regulations. Such temporarily dormant installation shall be subject to continued inspections for the duration of the "temporarily dormant" status by a licensed elevator inspector. Such inspector shall file a report with the commissioner describing the conditions of such temporarily dormant installation. The report shall be filed annually or more or less frequent as determined by the commissioner. "Temporarily dormant" status shall be renewable on an annual basis, but shall not exceed a five-year period.

No person shall remove the wire seal and padlock for any purpose without the express permission of the elevator inspector.

§ 953. Licensing, permit, registration and compliance requirements. 1. Except as otherwise provided for in subdivisions three and four of section nine hundred fifty-one of this article, it shall be a violation of this article for any elevator contractor to design, erect, construct, install, alter, replace, service, or maintain, any conveyance contained within buildings or structures in this state unless such elevator contractor holds an elevator contractor's license.

2. Except as otherwise provided for in subdivisions three and four of section nine hundred fifty-one of this article, it shall be a violation of this article for any person to wire any conveyance, from the mainline feeder terminals on the controller, in this state unless such person has an elevator mechanic's license and is working under the direct supervision of a licensed elevator contractor pursuant to this article. No other license shall be required for this work, excluding the installation of branch circuits and wiring terminations for machine room and pit lighting, receptacles and HVAC as described in the NFPA National Electric Code 620.23 and 620.24 as well as fire and heat detectors and alarms, may be performed by a licensed electrical contractor. Additionally, within New York city, the installation of branch circuits and wiring terminations for the car fan, lights and receptacles, as described in the NFPA National Electric Code 620.22, and intercoms and voice communications as well as signal equipment or systems, as defined in NFPA Article 620.2, that is not directly associated with the operation or safety of any conveyance, may be performed by a licensed electrical contractor.

3. Except as otherwise provided for in subdivision three of section nine hundred fifty-one of this article, it shall be a violation of this article for any person to inspect or test any conveyance within buildings or structures unless such person holds an elevator inspector's license.

4. Except as otherwise provided for in subdivisions three and four of section nine hundred fifty-one of this article, it shall be a violation of this article for any elevator contractor to erect, construct, install, or alter conveyances within buildings or structures within this state unless a permit therefor has been issued by the commissioner before work is commenced. No permit shall be issued except to a person holding a valid elevator contractor's license. A copy of such permit shall be kept at the construction site at all times while the work is in progress.

5. Except as otherwise provided in subdivision three of section nine hundred fifty-one of this article, all new conveyance installations shall be performed by an elevator contractor licensed to install such conveyance. Subsequent to installation, the elevator contractor must certify compliance to the commissioner with the applicable sections of this article as well as any other applicable law, rule, regulation or code. Prior to such conveyances being used, the property owner or lessee must obtain a certificate of operation from the commissioner. A fee, as set forth in this article, shall be paid for such certificate of operation, however, no such fee shall be required for conveyances in private residences. It is the responsibility of the licensed elevator contractor to complete and submit registrations for new installations. A certificate of operation shall be valid for one year, except for certificates issued for platform and stairway chairlifts for private residences, which shall be valid for a period of three years. Certificates of operation must be clearly and conspicuously displayed on, in or around each conveyance and be accessible to the state or locality inspecting or enforcing any applicable law, rule, regulation or code.

6. Except as otherwise provided in subdivision three of section nine hundred fifty-one of this article, the certificate of operation for newly installed platform lifts and stairway chairlifts for private residences shall be issued only subsequent to an inspection by a licensed third party inspection firm. The certificate of operation fee for all new and existing platform and stairway chairlifts for private residences and any renewal certificate fees are hereby waived. The inspection of private residence platform and stairway chairlifts shall be done at the request and consent of the private residence's owner or lessees.

7. It shall be the responsibility of licensees to ensure that the installation, service or maintenance of conveyances is performed in compliance with existing state and local building and maintenance codes.

§ 954. License and permit procedure. All applications for elevator contractor's, elevator mechanic's, and elevator inspector's licenses and required permits shall be submitted to the department in writing on forms furnished by the commissioner and shall contain the information set forth in this section as well as any additional information that the commissioner may require. The commissioner shall also set fees for licensing and permitting under this section.

1. Applications for licenses. Every application for a license under this article shall include the following:

(a) the name, residence address and business address of the applicant;

(b) the number of years the applicant has engaged in the business or practice of designing, constructing, erecting, installing, inspecting,

testing, repairing, altering, maintaining, or servicing conveyances covered by this article;

(c) the approximate number of persons, if any, to be employed by the applicant for an elevator contractor's license;

(d) evidence that the applicant is or will be covered by general liability, personal injury and property damage insurance; and

(e) any other information which the commissioner may require.

Upon approval of an application for a license the commissioner shall issue such license which shall be valid for two years. The fees for such license and renewal thereof shall be set by the commissioner. Any denial for such application shall set forth the reasons therefor.

2. Application for permits. Every application for a permit under this article shall include plans and specifications stamped and signed by a professional engineer and/or an architect licensed pursuant to article one hundred forty-five and/or article one hundred forty-seven of the education law. Every application for a permit under this article shall include the following:

(a) copies of the specifications and accurately scaled and fully dimensioned plans showing the location of the installation in relation to the plans and elevation of the building;

(b) the location of the machinery room and the equipment to be installed, relocated or altered;

(c) all structural supporting members thereof, including foundations;

(d) a list of all materials to be employed and all loads to be supported and conveyed;

(e) any other information that the commissioner may require to ensure that such plans and specifications are sufficiently complete and illustrate all details of construction and design; and

(f) any required permitting fees, which are subject to return upon denial of a permit application.

Upon approval of an application for a permit the commissioner shall issue such permit. Such permit shall state the time by which the work shall commence and also when such permit expires. If after the work has been started, work is suspended or abandoned for a period of sixty days, or such shorter period of time as the commissioner may specify at the time the permit is issued, the permit shall expire. Upon expiration of a permit for which work has not been completed, the commissioner may extend such permit.

3. Licensing and permitting exemptions. Whenever an emergency exists in this state due to a disaster or act of God, which imperils the health, safety or welfare of an individual or individuals and placing such individual or individuals in imminent danger of injury or death and the number of persons in the state holding licenses granted by the board is insufficient to cope with such emergency, any person certified by a licensed elevator contractor to have an acceptable combination of documented experience and education to perform elevator work without direct and immediate supervision shall seek an emergency elevator mechanic's license from the commissioner within five business days after commencing work requiring a license. The commissioner shall issue emergency elevator mechanic's licenses to address the emergency that exists. The licensed elevator contractor shall furnish proof of competency as the commissioner may require. Each such license shall recite that it is valid for a period of fifteen days from the date thereof and for such particular elevators or geographical areas as the commissioner may designate to address the emergency situation and otherwise shall entitle the licensee to the rights and privileges of an elevator mechanic's

license issued in this article. The commissioner shall renew an emergency elevator mechanic's license during the existence of an emergency as needed. No fee shall be charged for any emergency elevator mechanic's license or renewal thereof.

4. Restricted license. A restricted class of lift mechanic license shall be known as "accessibility technician". Such class of license shall be restricted to performing work involving platform lifts and stairway chairlifts including those installed in private residences which are covered by the provisions of ASME (American society of mechanical engineer) codes and standards A18.1-2005. An applicant for such restricted license shall complete an application approved by the board and shall have at least three years verified work experience in constructing, maintaining and repairing those lifts covered by ASME A18.1-2005 and shall provide to the commissioner a certificate of completion of an accessibility training program for lifts under the scope of A18.1-2005 such as the certified accessibility training provided by the national association of elevator contractors, or an equivalent program as deemed by the department.

§ 955. Qualifications, training and continuing education. 1. No license shall be granted to any person who has not paid the required application fee and demonstrated his or her qualifications and abilities. Applicants for a mechanic's license must demonstrate one of the following qualifications: (a) an acceptable combination of documented experience and education credits consisting of (i) not less than four years work experience in the construction, maintenance and service repair of elevators, as verified by current and previous employers and (ii) satisfactory completion of a written examination, administered or accepted by the commissioner, on the most recent national, state, and local conveyances codes and standards; or

(b) acceptable proof that he or she has worked on elevator construction, maintenance or repair with direct and immediate supervision in this state for a period of not less than four years immediately prior to the effective date of this article, provided that such applicant shall file such application within one year of release and access to the licensing application as defined in this article; or

(c) a certificate of successful completion and successfully passing the mechanic examination of a nationally recognized training program for the elevator industry including, but not limited to, the national elevator industry educational program or its equivalent; or

(d) a certificate of successful completion of the joint apprentice and training committee of the elevator industry of local 3, IBEW, EE division training program or an apprenticeship program for elevator mechanics, having standards substantially equal to those of this chapter, and registered with the bureau of apprenticeship and training, U.S. department of labor or a state apprenticeship council; or

(e) industry educational program, The National Association of Elevator Contractors (NAEC) Certified Elevator Technician (CET), or their equivalent; or

(f) The commissioner shall upon application and without examination, issue a license to any person over the age of eighteen years who has been duly licensed by any other state of the United States to engage in the business of construction, operation, inspection, maintenance, alteration and repair of elevators as verified by current and previous employers, upon compliance with standards and requirements not lower, in the judgement of the commissioner than those of this state, provided, however, that such state extends the same reciprocity to the licensees

of this state. Such application shall be accompanied by the required license fee.

2. Applicants for an elevator contractor's license must demonstrate to the commissioner that such elevator contractor employs licensed elevator mechanics who perform the work described in section nine hundred fifty-one of this article and have proof of compliance with the insurance requirements set forth in paragraph (d) of subdivision one of section nine hundred fifty-four of this article.

3. Applicants for an elevator inspector's license must demonstrate to the satisfaction of the commissioner that such applicant meets or exceeds applicable standards such as a Qualified Elevator Inspector (QEI) or its equivalent. Private elevator inspectors shall maintain the same insurance requirements as an elevator contractor.

4. (a) The renewal of all licenses granted under the provisions of this subdivision shall be conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing national, state, and local conveyances codes and standards and on technology and technical education and workplace safety. Such course shall consist of not less than eight contact hours (.8 CEU) annually and completed preceding any such license renewal. The commissioner shall establish requirements for continuing education and training programs, and shall approve such programs, as well as maintain a list of approved programs which shall be made available to license applicants, permit applicants, renewal applicants and other interested parties upon request. The commissioner shall promulgate rules and regulations setting forth the criteria for approval of such programs, the procedures to be followed in applying for such approval, and other rules and regulations as the commissioner deems necessary and proper to effectuate the purposes of this section.

(b) The commissioner shall assess a fee for each training program completion certificate and for each refresher training program completion certificate.

5. The renewal of all licenses granted under the provisions of this section shall be conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing regulations of the department. Such course shall consist of not less than eight contact hours (.8 CEU) of instruction that shall be attended and completed annually prior to any such license renewal.

The courses shall be taught through continuing education providers that may include, but shall not be limited to, association seminars, and labor training programs or programs that deliver an approved apprenticeship and are registered with the department or the New York state apprenticeship training council. The commissioner shall approve the continuing education providers. All instructors shall be exempt from the requirements of the preceding paragraph with regard to their application for license renewal provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal.

Approved training providers shall keep uniform records, for a period of six years, of attendance of licensees following a format approved by the commissioner and such records shall be available for inspection by the commissioner at his or her request. Approved training providers shall be responsible for the security of all attendance records and certificates of completion; provided, however, that falsifying or knowingly allowing another to falsify such attendance records or certif-

icates of completion shall constitute grounds for suspension or revocation of the approval required under this section.

§ 956. Powers of the commissioner. 1. The commissioner shall have the authority to inspect, or cause to be inspected, ongoing or completed conveyances projects and to conduct an investigation thereof upon the commissioner's own initiation or upon receipt of a complaint by any person or entity. However, nothing in this subdivision shall permit the commissioner to enter a private residence.

2. If, upon receipt of a complaint alleging a violation of this article, the commissioner reasonable believes that such violation exists, he or she shall investigate as soon as practicable to determine if such violation exists. If the commissioner determines that no violation or danger exists, the commissioner shall inform the complaining person or entity.

3. If, upon investigation, the commissioner determines that the alleged violation exists, the commissioner may deliver to such owner or elevator contractor or his or her agent or representative a written order to cure such violation and may order that their permit to work on such installation, repair or maintenance project shall be suspended until such violation is cured. Such order shall specifically enumerate the violations which constitute the basis of the order to cure or order of suspension and shall specify the corrective action to be taken. The commissioner may allow the permit to toll during the time of such order.

4. Upon receipt of a written notice from the elevator contractor, or his or her agent or representative, that such violation has been corrected, the commissioner shall, within ten days, issue a determination as to whether such order to cure has been satisfied and such order of suspension, if any, shall be lifted. If the commissioner determines that the order to cure has not been satisfied he or she may continue such order for a reasonable period of time upon the consent of the contractor, or his or her agent or representative. If the commissioner does not continue the order, or if the contractor, or his or her agent or representative does not consent to such continuation, the contractor shall have the right to a hearing to determine if such order shall be lifted. Any entity or contractor who may be adversely affected by a notice, suspension, or determination issued under this section may commence a proceeding pursuant to article seventy-eight of the civil practice law and rules.

5. The commissioner may, after a notice and hearing, suspend or revoke a license issued under this article based on any of the following violations:

(a) any false statement as to a material matter in the application;

(b) fraud, or misrepresentation, in securing a license;

(c) failure to notify the commissioner and the owner or lessee of a conveyance of any condition not in compliance with this article;

(d) a violation of section nine hundred fifty-three of this article; or

(e) a finding by the commissioner that a contractor has violated this article or any rule or regulation promulgated thereunder twice within a period of three years, or that a contractor has violated a provision of this article and such violation resulted in a serious threat to the health or safety of an individual or individuals. The commissioner may, in addition to ordering that such contractor's license be revoked, bar such individual from being eligible to reapply for such license for a period not to exceed two years.

6. The commissioner may, after notice and hearing, revoke a permit issued under this article based on any of the following violations:

(a) any false statements or misrepresentation as to a material fact in the application, plans, or specifications on which the permit was based;

(b) any application which by omission or mistake fails to comply with the requirements of this article;

(c) any failure to perform work in accordance with the provisions of the application, plans or specifications or with the requirements of this article or conditions of the permit;

(d) a failure by the owner or elevator contractor to whom the permit was issued to comply with an order issued pursuant to subdivision four of this section; or

(e) a finding by the commissioner that an individual or contractor who has been issued a permit has violated any provision under section nine hundred fifty-three of this article.

7. (a) Except as provided in paragraph (b) of this subdivision, if the commissioner finds, after notice and hearing, that an individual has violated any provision of this article, he or she may impose a civil penalty not to exceed one thousand dollars for each such violation. Upon a second or subsequent violation within three years of the determination of a prior violation, the commissioner may impose a civil penalty not to exceed two thousand dollars.

(b) The penalty provided for in paragraph (a) of this subdivision may be increased to an amount not to exceed five thousand dollars if the violation resulted in a serious threat to the health or safety of an individual or individuals.

8. Any entity or contractor who may be adversely affected by an order issued under this section may commence a proceeding pursuant to article seventy-eight of the civil practice law and rules.

9. The commissioner may bring an action in a court of competent jurisdiction to enjoin any conduct that violates the provisions of this article.

10. The commissioner may promulgate rules and regulations necessary to carry out and effectuate the provisions of this article.

§ 957. New York state elevator safety and standards board. 1. An elevator safety and standards board is hereby created, to consist of nine members. The governor, the temporary president of the senate, and the speaker of the assembly shall each appoint three members. The governor's appointees shall be comprised of a representative of a major elevator manufacturing company, an elevator inspector and a building owner, manager or representative; the temporary president of the senate's appointees shall be comprised of an elevator servicing company, an elevator architectural designer or consultant, and an individual from an elevator industry association; the speaker of the assembly's appointees shall be comprised of an elevator contractor employee labor union, an elevator mechanic, and a fire marshal. The commissioners of health, labor, education, and economic development or their designees shall be ex-officio members. The board shall meet on an as needed basis to advise the commissioner on the implementation of this article. The board shall elect a chairperson to serve for the term of their appointment to the board. The board shall prepare an annual report for the governor and the legislature, copies of which shall be sent to the commissioners of health, education, economic development, and labor.

2. The first member appointed by the governor, the temporary president of the senate, and the speaker of the assembly shall have a term of one year; the second member appointed by each shall have a term of two years

and the remaining members shall have a term of three years. Each of such appointed members shall hold office for the term for which such member was appointed and until his or her successor shall have been appointed or until he or she shall resign. The term of office of all successor members shall be three years. The members shall serve without salary or compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties.

3. The board may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation, and inspection of conveyances and the adequate, reasonable, and necessary qualifications of elevator mechanics, contractors, and inspectors.

4. The duties of the board are as follows:

(a) assist the commissioner and the department in establishing the state regulations for equipment covered by this article;

(b) develop recommendations for an enforcement program which will ensure compliance with the regulations and requirements promulgated by the commissioner pursuant to this article;

(c) assist the commissioner in granting exceptions and variances from the literal requirements of the applicable code and standards, regulations, and local legislation, in cases where such variances would not jeopardize the public safety and welfare;

(d) assist the commissioner in setting fee schedules for licenses, permits, and inspections. The fees shall reflect the actual costs and expenses to conduct the duties as described in this article; and

(e) assist the commissioner in any and all things necessary or convenient to the commissioner's duty to carry out the purposes of this article.

§ 958. Exempt persons. This article shall not be construed to apply to the practice, conduct, activities, or services by a person licensed to practice architecture within this state pursuant to article one hundred forty-seven of the education law or engineering within this state pursuant to article one hundred forty-five of the education law.

§ 2. The state finance law is amended by adding a new section 97-pppp to read as follows:

§ 97-pppp. Elevator and related conveyances safety program account. 1. There is hereby established in the custody of the state comptroller the elevator and related conveyances safety program account.

2. Such fund shall consist of moneys collected pursuant to the provisions of article thirty-three of the labor law.

3. Moneys of the fund shall be available to the commissioner of labor for purposes of offsetting the costs incurred by the commissioner of labor for the administration of article thirty-three of the labor law, including the administration of elevator and related conveyances safety programs, the administration of licenses and permits, and the administration of certificates of operation as set forth in such article thirty-three.

4. The moneys shall be paid out of the fund on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner or his or her designee.

5. Notwithstanding the provisions of any general or special law, no moneys shall be available from the fund until a certificate of allocation and a schedule of amounts to be available therefor shall have been issued by the director of the budget, and a copy of such certificate filed with the comptroller. Such certificate may be amended from

time to time by the director of the budget and a copy of each such amendment shall be filed with the comptroller.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided, however, that effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of this act on its effective date, and the appointment of the New York state elevator safety and standards board, are authorized and directed to be established, made and completed on or before such effective date.