

HOUSE BILL NO. 597

INTRODUCED BY P. WAGMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE LICENSURE OF ELEVATOR CONTRACTORS AND ELEVATOR MECHANICS BY THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING DEFINITIONS; PROVIDING PROCEDURES FOR LICENSE RENEWALS, FEES COMMENSURATE WITH COSTS, TEMPORARY LICENSES, AND CONTINUING EDUCATION FOR ELEVATOR CONTRACTORS AND ELEVATOR MECHANICS; REQUIRING INSTALLATION PERMITS AND OPERATING CERTIFICATES TO INSTALL OR RELOCATE A CONVEYANCE; AUTHORIZING RANDOM INSPECTIONS; GRANTING RULEMAKING AUTHORITY TO THE DEPARTMENT TO ISSUE LICENSES, PERMITS, AND CERTIFICATES AND ENFORCE PROVISIONS; PROVIDING THAT LIABILITY REMAINS THE RESPONSIBILITY OF A CONVEYANCE OWNER OR OPERATOR; AMENDING SECTION 50-60-702, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 4, 12, and 14 through 17] may be cited as the "Elevator Contractors and Mechanics Licensing Act".

NEW SECTION. Section 2. Purpose -- legislative intent. (1) The purpose of [sections 1 through 4, 12, and 14 through 17] is to provide for the public safety, to promote safety awareness, and to ensure the safe design, mechanical and electrical operation, erection, installation, alteration, maintenance, inspection, and repair of conveyances.

(2) The use of unsafe and defective conveyances imposes a substantial probability of serious and preventable injury to employees and the public who are exposed to unsafe conditions. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state.

(3) It is the intent of the legislature that elevator mechanics performing work must, by documented training or experience or both, be familiar with the operation and safety functions of the components and equipment. Training and experience must include but is not limited to recognizing the safety hazards and

performing repair procedures in conformance with the requirements of [sections 1 through 4, 12, and 14 through 17].

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 4, 12, and 14 through 17], the following definitions apply:

(1) "Automobile parking elevator" means an elevator:

(a) located in either a stationary or horizontally moving hoistway;

(b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and

(c) in which individuals are not normally stationed on any level except the receiving level.

(2) "Conveyance" means an elevator, escalator, dumbwaiter, automobile parking elevator, moving walk, or other elevating device.

(3) "Department" means the department of labor and industry.

(4) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car:

(a) that moves in guides in a substantially vertical direction;

(b) the floor area of which does not exceed 9 square feet;

(c) the inside height of which does not exceed 4 feet;

(d) the capacity of which does not exceed 500 pounds; and

(e) that is used exclusively for carrying materials.

(5) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure.

(6) "Elevator contractor's license" means a license that is issued to firms or business organizations, including but not limited to sole proprietorships, partnerships, corporations, or limited liability entities that have met the qualifications established in [section 16].

(7) "Elevator mechanic" means any person who possesses an elevator mechanic's license in accordance with [section 15] and who is engaged in erecting, constructing, installing, altering, servicing, repairing, or maintaining conveyances covered by [sections 1 through 4, 12, and 14 through 17].

(8) "Elevator mechanic's license" means a license that is issued to a person who has met the qualifications requirements established in [section 16].

(9) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers.

(10) "Inspector" means an individual who is an elevator inspector authorized by 50-60-702.

(11) "License" means a written license, issued by the department, authorizing a person to carry on the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining conveyances covered by [sections 1 through 4, 12, and 14 through 17].

(12) "Licensee" means a licensed elevator mechanic or elevator contractor.

(13) "Moving walk" means a passenger-carrying device:

(a) on which passengers stand or walk; and

(b) on which the passenger-carrying surface remains parallel to its direction of motion.

NEW SECTION. Section 4. Rulemaking authority -- applicability. (1) The department shall adopt rules establishing:

(a) a schedule of fees commensurate with issuance of licenses and renewals and for costs to pay the costs incurred by the department for the work related to administration and enforcement of [sections 1 through 4, 12, and 14 through 17];

(b) the types of documents that may be used to prove that a person or business organization has worked as an elevator contractor or mechanic or as a maintenance or repair person or organization for purposes of issuance of an elevator contractor's license or an elevator mechanic's license.

(2) The provisions of Title 37, chapter 1, part 4, apply to [sections 1 through 4, 12, and 14 through 17].

NEW SECTION. Section 5. Responsibility for operation and maintenance of equipment -- periodic tests. (1) The person installing, relocating, or altering a conveyance is responsible for its operation and maintenance until the department of labor and industry has issued an operating certificate for the conveyance, except during the period when a limited operating certificate in accordance with [section 8(2)] is in effect, and is also responsible for all tests of a new, relocated, or altered conveyance until the department has issued an operating certificate for the conveyance.

(2) The owner or the owner's agent is responsible for the safe operation and proper maintenance of the conveyance after the department of labor and industry has issued the operating certificate and also during the period of effectiveness of any limited operating certificate in accordance with [section 8(2)]. The owner is

1 responsible for all periodic tests required by the department.

2
3 **NEW SECTION. Section 6. State elevator numbers.** All new and existing conveyances must have
4 a state elevator number painted on or attached to the conveyance as directed by the department of labor and
5 industry. The state elevator number must be assigned by the department and shown on all required permits and
6 certificates.

7
8 **NEW SECTION. Section 7. Installation permits -- when required -- application -- posting.** (1)
9 Except as provided in subsection (4), an installation permit must be obtained from the department of labor and
10 industry before erecting, installing, relocating, or altering a conveyance, as defined in [section3].

11 (2) The installer of the conveyance shall submit an application for the permit in duplicate, in a form that
12 the department of labor and industry may prescribe.

13 (3) The permit issued by the department of labor and industry must be conspicuously posted at the site
14 of installation.

15 (4) A permit is not required for repairs and replacement normally necessary for maintenance and made
16 with parts of equivalent materials, strength, and design.

17 (5) All installations, relocations, or alterations of new conveyances must be performed by a person
18 licensed to install, relocate, or alter conveyances.

19 (6) The person installing, relocating, or altering a conveyance shall notify the department of labor and
20 industry before completion of the work and shall subject the new, moved, or altered portions of the conveyance
21 to acceptance tests.

22 (7) All new, relocated, or altered conveyances for which a permit has been issued must be inspected
23 for compliance with the requirements of [sections 5 through 11, 13, and 18] by an authorized representative of
24 the department of labor and industry. The authorized representative shall also witness the test specified.

25
26 **NEW SECTION. Section 8. Operating certificates -- limited certificates -- duration -- posting.** (1)
27 An operating certificate is required for each conveyance, as defined in [section 3], operated in the state except
28 during its construction. A certificate issued by the department of labor and industry must be conspicuously
29 posted near the conveyance.

30 (2) The department of labor and industry may issue a certificate for the temporary use of a conveyance

1 during its installation or alteration under the authority and in the form of a limited certificate issued by the
2 department for each class of service. Limited certificates must be issued for a period not to exceed 30 days and
3 may be renewed at the discretion of the department. A limited certificate is intended to provide transportation
4 for construction personnel, tools, and materials only. If a limited certificate is issued, a notice bearing the
5 information that the equipment has not been finally approved must be conspicuously posted.

6
7 **NEW SECTION. Section 9. Exceptions authorized.** (1) The requirements of [sections 5 through 11,
8 13, and 18] apply to all conveyances, as defined in [section 3], unless a requirement has been modified or
9 waived by the department of labor and industry.

10 (2) The department of labor and industry may modify or waive a requirement whenever the requirement
11 is shown to be impracticable, including but not limited to a finding that the expense involved is not justified by
12 the protection secured. However, the department may not allow a modification or waiver unless equivalent or
13 safer construction is secured in other ways. An exception applies only to the installation covered by the
14 application for waiver.

15
16 **NEW SECTION. Section 10. Inspectors -- inspections and reinspections -- suspension or**
17 **revocation of certificate -- order to discontinue use -- penalties -- investigation by department.** (1) The
18 department of labor and industry shall:

19 (a) appoint and employ inspectors to carry out the provisions of [sections 5 through 11, 13, and 18]
20 under the provisions of the rules adopted by the department;

21 (b) require all conveyances to be inspected and tested pursuant to the requirements of this chapter.
22 Inspectors have the right during reasonable hours to enter into and upon any building or premises in the
23 discharge of their official duties for the purpose of making any inspection or testing any conveyance, as defined
24 in [section 3], in the building or on the premises. Inspections and tests must conform with the rules adopted by
25 the department.

26 (c) inspect an installation before it issues any initial certificate for operation, and a certificate may not
27 be issued until the fees required by this chapter have been paid; and

28 (d) if an inspection shows a conveyance to be in an unsafe condition, issue an inspection report in
29 writing requiring the repairs or alterations to be made to the conveyance that are necessary to render it safe and
30 may also suspend or revoke a certificate or order the operation of a conveyance discontinued pursuant to rules

1 adopted by the department.

2 (2) The department of labor and industry may seek injunctive relief for failure to:

3 (a) correct a violation within a timeframe prescribed by the department by rule after the owner is notified
4 in writing of inspection results; or

5 (b) submit official notification in writing to the department that all corrections have been completed.

6
7 **NEW SECTION. Section 11. Violations for failure to obtain a permit.** (1) Except as provided in
8 [sections 7 and 8], the construction, installation, relocation, alteration, maintenance, or operation of a
9 conveyance without a permit by any person owning or having the custody, management, or operation of the
10 conveyance is a misdemeanor.

11 (2) Each day of violation is a separate offense. A prosecution may not be maintained when the issuance
12 or renewal of a permit has been requested but action has not been taken by the department of labor and
13 industry.

14
15 **NEW SECTION. Section 12. Violations for failure to obtain license.** (1) The construction,
16 installation, relocation, alteration, maintenance, or operation of a conveyance without a license by any person
17 is a misdemeanor.

18 (2) Each day of violation is a separate offense. A prosecution may not be maintained when the issuance
19 or renewal of a license has been requested by an applicant but action has not been taken by the department.

20
21 **NEW SECTION. Section 13. Accidents -- report and investigation -- cessation of use -- removal**
22 **of damaged parts.** (1) The owner or the owner's authorized agent shall notify the department of labor and
23 industry within 48 hours of each accident to an individual requiring the service of a physician or resulting in a
24 disability exceeding 1 day and shall allow the department into the facility to investigate the accident and inspect
25 the site.

26 (2) After being notified, the department of labor and industry shall without delay investigate and file a
27 complete report of the accident. The report must detail all material facts and information available and the cause
28 or causes as far as they can be determined. The report must be open to public inspection at all reasonable
29 hours.

30 (3) When an accident involves the failure or destruction of any part of the construction or the operating

1 mechanism of a conveyance, the use of the conveyance is prohibited until it has been made safe, has been
2 reinspected, any repairs, changes, or alterations have been approved by the department of labor and industry,
3 and a permit has been issued by the department. The removal of any part of the damaged construction or
4 operating mechanism from the premises is prohibited without the department's permission.

5
6 **NEW SECTION. Section 14. Disposition of revenue.** All money received or collected under [sections
7 1 through 4, 12, and 14 through 17] must be deposited in a special revenue account for use of the department
8 to support enforcement of [sections 1 through 4, 12, and 14 through 17].

9
10 **NEW SECTION. Section 15. Licenses required -- elevator mechanic's license -- elevator**
11 **contractor's license.** (1) A person may not erect, construct, wire, alter, replace, maintain, remove, or dismantle
12 any conveyance contained within a building or structure in this state unless the person has an elevator
13 mechanic's license and the person is working under the direct supervision of a person, firm, or company that
14 has an elevator contractor's license pursuant to [section 16].

15 (2) A person, firm, or company is not required to have an elevator contractor's license for removing or
16 dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or
17 structure or when the building is demolished so that all that remains is the basic support structure and access
18 is not permitted to the building or structure.

19
20 **NEW SECTION. Section 16. Elevator contractor's license -- elevator mechanic's license --**
21 **qualifications -- reciprocity.** (1) Prior to installing, altering, servicing, replacing, or maintaining a conveyance
22 in the state, a person or business organization shall apply for a license on a form provided by the department
23 and be a licensed or registered contractor or mechanic under [sections 1 through 4, 12, and 14 through 17].

24 (2) An elevator contractor's license may not be granted to a person unless the person or business
25 organization has:

26 (a) a minimum of 5 years of work experience in the elevator industry in construction, maintenance, and
27 service or repair, as verified by current and previous elevator contractor licenses to do business; or

28 (b) satisfactorily completed a state examination prescribed by the department that demonstrates the
29 person's or business organization's knowledge of the requirements of [sections 1 through 4, 12, and 14 through
30 17] and rules adopted to implement this section.

(3) A business organization may designate only one person to complete the required examination on its behalf.

(4) An elevator mechanic's license may not be granted to a person unless the person:

(a) possesses an acceptable combination of documented experience and education credits, including not less than 3 years of work experience in the elevator industry, in construction, maintenance, and service or repair, as verified by current and previous employers licensed to do business in this state; and

(b) has satisfactorily completed an examination prescribed by the department that demonstrates the person's knowledge of the requirements of [sections 1 through 4, 12, and 14 through 17] and rules adopted to implement the requirements of [sections 1 through 4, 12, and 14 through 17].

(5) Any person or business organization that furnishes the department with acceptable proof that the person or business organization has worked as an elevator contractor or mechanic or as a maintenance or repair person or organization shall, after applying for a license and paying the application fee, receive a license without an examination.

(6) Upon application and without examination, a license must be issued to a person holding a valid license from a state that has entered into a reciprocal agreement with the department and that has standards substantially equal to those of [sections 1 through 4, 12, and 14 through 17].

NEW SECTION. Section 17. Licenses -- renewals -- fees -- temporary licenses -- continuing education -- records. (1) Upon approval of an application, the department may issue a license that is renewable biennially at a time prescribed by the department.

(2) The department may issue temporary elevator mechanic's licenses to persons who are certified as qualified and competent. Each license must include a provision stating that the license is valid for a period of 30 days from the date of issuance and for those particular elevators or geographical areas designated by the department and entitling the licensee to the rights and privileges of a holder of an elevator mechanic's license issued under [sections 1 through 4, 12, and 14 through 17].

(3) A temporary elevator mechanic's license must be renewed by the department, and a fee as established in rule must be charged for any temporary elevator mechanic's license or renewal.

(4) The renewal of a license granted under this section is conditioned upon the submission of a certificate of completion of a course designed to ensure the relevant continuing education of licensees. A course must consist of not less than 8 hours of instruction that must be attended and completed within 2 years

1 immediately preceding any license renewal.

2 (5) A licensee shall submit proof of completion of continuing education within the time and in the manner
3 required by the department. If a licensee fails to submit the proof, the department shall notify the licensee of the
4 failure and provide the licensee the opportunity to present to the department the reasons for the failure. Upon
5 failure of the licensee to show good cause for failing to submit timely proof of completion of continuing education,
6 the department may suspend the individual's license. After suspension, the licensee is entitled to a hearing on
7 the suspension in accordance with the provisions of chapter 1, part 3, of this title and the contested case
8 provisions of the Montana Administrative Procedure Act.

9 (6) A licensee who is unable to complete the continuing education course required under this section
10 before the expiration of the licensee's license due to a temporary disability may apply for a waiver from the
11 department. The application must be on a form provided by the department and accompanied by a certified
12 statement from a physician verifying the temporary disability. Upon the termination of the temporary disability,
13 the licensee shall submit to the department a certified statement from the same physician, if practicable, verifying
14 the termination of the temporary disability. Upon verification, a waiver sticker, valid for 90 days, must be issued
15 to the licensee and affixed to the licensee's license.

16 (7) Approved training providers shall keep records of attendance of licensees for a period of 5 years,
17 and the records must be available for inspection by the department at its request. Approved training providers
18 are responsible for the security of all attendance records and certificates of completion. However, falsifying or
19 knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for
20 suspension or revocation of the approval required under this section.

21
22 **NEW SECTION. Section 18. Liability not limited or assumed by state.** The provisions of [sections
23 1 through 4, 12, and 14 through 17] may not be construed to relieve or lessen the responsibility or liability of any
24 person, firm, or corporation owning, operating, controlling, maintaining, erecting, constructing, installing, altering,
25 inspecting, testing, or repairing any elevator or other related mechanisms covered by [sections 1 through 4, 12,
26 and 14 through 17] for damages to person or property caused by any defect.

27
28 **Section 19.** Section 50-60-702, MCA, is amended to read:

29 **"50-60-702. Department to adopt inspection standards -- certification of inspectors.** (1) The
30 department shall adopt standards for the inspection of equipment subject to this part. The standards must ensure

1 compliance with the requirements of the state building code.

2 (2) The department shall adopt rules:

3 (a) for the certification of maintenance and insurance company inspectors who may inspect equipment
4 subject to this part; and

5 (b) governing the mechanical and electrical operation, erection, installation, alteration, inspection,
6 acceptance tests, and repair of conveyances and minimum standards governing existing installations.

7 (3) Before adopting rules, the department shall consider model rules for the safe mechanical operation,
8 erection, installation, alteration, inspection, and repair of conveyances, including rules established by the
9 American Society of Mechanical Engineers Safety Code for Elevators and Escalators."

10
11 **NEW SECTION. Section 20. Codification instruction.** (1) [Sections 1 through 4, 12, and 14 through
12 17] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1
13 through 4, 12, and 14 through 17].

14 (2) [Sections 5 through 11, 13, and 18] are intended to be codified as an integral part of Title 50, chapter
15 60, and the provisions of Title 50, chapter 60, apply to [sections 5 through 11, 13, and 18].

16
17 **NEW SECTION. Section 21. Severability.** If a part of [this act] is invalid, all valid parts that are
18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
19 the part remains in effect in all valid applications that are severable from the invalid applications.

20
21 **NEW SECTION. Section 22. Effective date -- applicability.** [This act] is effective January 1, 2004,
22 and applies to licenses, permits, or certificates issued on or after January 1, 2004.

23 - END -