

SENATE FLOOR SUBSTITUTE FOR
SENATE BILL 280

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO PROFESSIONAL STANDARDS; ENACTING THE ELEVATOR
SAFETY ACT; PROVIDING FOR LICENSURE OF CONVEYANCE MECHANICS,
CONTRACTORS AND INSPECTORS; PROVIDING FOR FEES FOR LICENSURE
AND PERMITTING; CREATING A FUND; PROVIDING PENALTIES; MAKING AN
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the
"Elevator Safety Act".

SECTION 2. DEFINITIONS.--As used in the Elevator Safety
Act:

A. "commission" means the construction industries
commission;

B. "contractor" means a sole proprietor, firm or
corporation that possesses an elevator contractor's license

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1 pursuant to the Elevator Safety Act and is engaged in the
2 business of erecting, constructing, installing, altering,
3 servicing, repairing or maintaining conveyances;

4 C. "conveyance" means:

5 (1) any hoisting and lowering mechanism
6 equipped with a car or platform that moves between two or more
7 landings, including elevators, escalators, moving sidewalks,
8 platform lifts or stairway chair lifts for carrying persons
9 between landings; and

10 (2) hoisting and lowering mechanisms that are
11 equipped with a car, that serve two or more landings and that
12 are restricted to carrying materials by its limited size and
13 limited access;

14 D. "director" means the director of the
15 construction industries division of the regulation and
16 licensing department;

17 E. "inspector" means a person who possesses an
18 elevator inspector's certificate pursuant to the Elevator
19 Safety Act;

20 F. "mechanic" means a person who possesses an
21 elevator mechanic's license pursuant to the provisions of the
22 Elevator Safety Act and who is engaged in erecting,
23 constructing, installing, altering, servicing, testing,
24 repairing or maintaining and performing electrical work on
25 related conveyances covered by that act;

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1 G. "standards" means the American society of civil
2 engineers' safety code for elevators and escalators, the
3 performance-based safety standard for elevators and escalators,
4 the safety code for existing elevators and escalators, the
5 standard for the qualifications of elevator inspectors, the
6 safety standard for platform lifts and stairway chair lifts and
7 the standard for elevator suspension, compensation and governor
8 systems. The latest additions of each of the standards shall
9 be adopted within six months of their publication; and

10 H. "temporarily dormant" means that a conveyance
11 whose power supply has been disconnected by removing fuses and
12 placing a padlock on the mainline disconnect switch in the off
13 position is parked and the hoistway doors are in the closed and
14 latched position with a wire seal installed on the mainline
15 disconnect switch by an inspector.

16 **SECTION 3. EXEMPTIONS.**--The following are exempted from
17 the provisions of the Elevator Safety Act:

- 18 A. material hoists;
19 B. manlifts;
20 C. mobile scaffolds, towers and platforms;
21 D. powered platforms and equipment for exterior and
22 interior maintenance;
23 E. conveyors and related equipment;
24 F. cranes, derricks, hoists, hooks, jacks and
25 slings;

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- 1 G. industrial trucks;
- 2 H. portable equipment, except for portable
- 3 escalators that are covered by the standards;
- 4 I. tiering or piling machines that are used to move
- 5 materials to and from storage and that are located and
- 6 operating entirely within one story;
- 7 J. equipment for feeding or positioning materials
- 8 at machine tools, printing presses and similar equipment;
- 9 K. skip or furnace hoists;
- 10 L. wharf ramps;
- 11 M. railroad car lifts or dumpers; and
- 12 N. line jacks, false cars, shafters, moving
- 13 platforms and similar equipment used for installing an elevator
- 14 by a contractor licensed in this state.

15 SECTION 4. COMMISSION DUTIES--RULES.--

16 A. The commission shall adopt rules for the
17 equipment regulated by the Elevator Safety Act, including the
18 latest editions of:

- 19 (1) a safety code for elevators and
- 20 escalators;
- 21 (2) a safety code for existing elevators and
- 22 escalators;
- 23 (3) a performance-based safety code for
- 24 elevators and escalators;
- 25 (4) safety standards for platform lifts and

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1 stairway chairlifts;

2 (5) standards for the qualification of
3 elevator inspectors developed by the American society of
4 mechanical engineers; and

5 (6) the automated people mover standards
6 promulgated by the American society of civil engineers.

7 B. The commission shall adopt the latest editions
8 of the standards provided for in Subsection A of this section
9 within six months of their effective date. Any modifications
10 to those standards, that the commission deems necessary, shall
11 be justified in writing. The commission shall grant exceptions
12 and variances to its rules only where such exceptions and
13 variances will not jeopardize the public safety and welfare.

14 C. The commission shall hear an appeal and hold
15 hearings and issue a decision on an appeal within thirty days
16 of the submission of an appeal.

17 D. The commission shall establish fee schedules for
18 licenses, permits, certificates and inspections. The fees
19 shall reflect the actual costs and expenses to carry out the
20 provisions of the Elevator Safety Act.

21 **SECTION 5. CONVEYANCE MECHANICS, CONTRACTORS AND**
22 **INSPECTORS--LICENSE REQUIREMENTS.--**

23 A. No person shall erect, construct, alter,
24 replace, maintain, remove or dismantle any conveyance contained
25 within buildings or structures unless the person is a mechanic

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1 licensed pursuant to the Elevator Safety Act who is working
2 under the direct supervision of a contractor pursuant to that
3 act. No person shall wire any conveyance from the mainline
4 feeder terminals on the controller unless the person is
5 licensed as a mechanic pursuant to the Elevator Safety Act and
6 is working as an employee of a contractor pursuant to that act.
7 No other license shall be required for this work.

8 B. A licensed elevator contractor is not required
9 for removing or dismantling conveyances that are destroyed as a
10 result of a complete demolition of a secured building or
11 structure or where the hoistway or wellway is demolished back
12 to the basic support structure whereby no access is permitted
13 therein to endanger the safety and welfare of any person.

14 C. No person shall inspect any conveyance within
15 buildings or structures, including but not limited to
16 residences, unless the person is certified as an inspector
17 pursuant to the Elevator Safety Act.

18 SECTION 6. ELEVATOR MECHANIC'S, INSPECTOR'S AND
19 CONTRACTOR'S LICENSES.--

20 A. A person wishing to engage in the business or
21 practice of installing, altering, servicing, replacing,
22 maintaining or inspecting conveyances shall apply for the
23 appropriate license with the construction industries division
24 of the regulation and licensing department on established forms
25 from the division.

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1 B. Applications shall contain:

2 (1) if the applicant is an individual, the
3 name, residence and business address of the applicant;

4 (2) if the applicant is a partnership, the
5 name, residence and business address of each partner;

6 (3) if the applicant is a domestic
7 corporation, the name and business address of the corporation
8 and the name and residence address of the principal officer of
9 the corporation;

10 (4) if the applicant is a corporation other
11 than a domestic corporation, the name and address of an agent
12 located locally who shall be authorized to accept service of
13 process or official notices;

14 (5) the number of years that the applicant has
15 engaged in the business of installing, inspecting, maintaining
16 or servicing conveyances;

17 (6) the approximate number of persons, if any,
18 to be employed by a contractor applicant and, if applicable,
19 satisfactory evidence that those employees are or will be
20 covered by workers' compensation insurance;

21 (7) satisfactory evidence that the applicant
22 is or will be covered by general liability, personal injury and
23 property damage insurance;

24 (8) any record of criminal convictions, as
25 verified by the department of public safety; and

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1 (9) any other information that the director
2 may require.

3 C. No license shall be granted to a person who has
4 not fulfilled the requirements of this section.

5 D. Conveyance mechanics employed by licensed
6 contractors shall:

7 (1) demonstrate an acceptable combination of
8 documented experience and education credits, including not less
9 than three years of work experience in the elevator industry or
10 in construction, maintenance, service or repair or any
11 combination thereof, as verified by current and previous
12 employers licensed to do business and complete a written
13 examination approved by the director on the most recent
14 referenced codes and standards;

15 (2) be entitled to receive a license without
16 an examination if the person furnishes the commission with
17 acceptable proof that the person has worked in elevator
18 construction, maintenance or repair and the work was without
19 direct and immediate supervision, was for an elevator
20 contractor and was not less than four years prior to the
21 effective date of the Elevator Safety Act. The person shall
22 make application within one year of the effective date of that
23 act;

24 (3) provide a certificate of completion of and
25 successful passing of the mechanic's examination of a

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1 nationally recognized training program for the elevator
2 industry, such as the national elevator industry educational
3 program or its equivalent;

4 (4) provide a certificate of completion of an
5 apprenticeship program for elevator mechanics that has
6 standards substantially equal to those of the Elevator Safety
7 Act and is registered with the office of apprenticeship of the
8 United States department of labor or the New Mexico state
9 apprenticeship council; or

10 (5) provide a valid license issued to the
11 person by a state having standards substantially equal to those
12 of the Elevator Safety Act.

13 E. No inspector's certificate shall be granted to a
14 person unless the person demonstrates to the satisfaction of
15 the director that current standards, such as ASME-QEI-1, for
16 the qualifications of elevator inspectors have been met.

17 F. A contractor's license may be issued to an
18 applicant that holds a valid license from a state having
19 standards substantially equal to those of the Elevator Safety
20 Act.

21 **SECTION 7. ISSUANCE AND RENEWAL OF LICENSES--FEES--**
22 **CONTINUING EDUCATION.--**

23 A. The director may issue a license pursuant to the
24 Elevator Safety Act, renewable every three years, upon payment
25 of a fee set by the director.

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1 B. The renewal of a license shall be conditioned
2 upon the submission of a certificate of completion of a course
3 designed to ensure the continuing education of licensees on new
4 and existing provisions of the rules of the commission,
5 including not less than eight hours of instruction completed
6 within one year immediately preceding the date of license
7 renewal.

8 C. Continuing education courses shall be taught by
9 instructors through continuing education providers and may
10 include association seminars or labor training programs
11 approved by the commission; except that instructors may be
12 exempt from the requirements for license renewal if the
13 instructor was qualified at any time during the year
14 immediately preceding the scheduled date for renewal.

15 D. Training providers shall be subject to approval
16 by the director. Training providers shall keep uniform records
17 for ten years of attendance of licensees and shall follow a
18 format approved by the director. The records shall be
19 available for inspection by the director. Training providers
20 shall be responsible for the security of all attendance records
21 and certificates of completion. Falsifying or knowingly
22 allowing another to falsify attendance records or certificates
23 of completion constitutes grounds for suspension or revocation
24 of the training provider's approval.

25 **SECTION 8. EMERGENCY AND TEMPORARY LICENSES--LICENSES.--**

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1 A. If the governor has declared an emergency due to
2 a disaster, act of God or work stoppage and the number of
3 persons in the state holding licenses granted by the director
4 is insufficient to cope with the emergency, contractors may
5 respond as necessary to ensure the safety of the public. A
6 person certified by a licensed contractor to have an acceptable
7 combination of documented experience and education to perform
8 elevator work without direct and immediate supervision shall
9 seek an emergency mechanic's license from the director within
10 five business days after commencing work that otherwise
11 requires a license. The director shall issue emergency
12 mechanic's licenses. The contractor shall furnish such proof
13 of competency as the director may require. Each emergency
14 license shall be valid for no more than forty-five days from
15 the date of its issuance and for such particular elevators or
16 geographical areas as the director designates. The director
17 shall renew an emergency mechanic's license if the emergency
18 continues beyond forty-five days. No fee shall be charged for
19 an emergency mechanic's license or its renewal.

20 B. A contractor shall notify the director when
21 there are no licensed personnel available to perform elevator
22 work. The contractor may request that the director issue
23 temporary elevator mechanic's licenses to persons certified by
24 the contractor to have an acceptable combination of documented
25 experience and education to perform elevator work without

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1 direct and immediate supervision. Any person certified by a
2 contractor to have an acceptable combination of documented
3 experience and education to perform elevator work without
4 direct and immediate supervision shall immediately seek a
5 temporary elevator mechanic's license from the director and
6 shall pay a fee as determined by the director. Each temporary
7 elevator mechanic's license shall state that it is valid for
8 the term of the employing contractor's license, and renewable
9 biennially, as long as the shortage of licensed personnel
10 continues.

11 **SECTION 9. TEMPORARILY DORMANT CONVEYANCES.--A**

12 temporarily dormant conveyance shall not be used again until it
13 has been put in safe running order and is in condition for use,
14 and annual inspections shall continue for the duration of the
15 temporarily dormant status by an inspector. Temporarily
16 dormant status shall be renewable on an annual basis and shall
17 not exceed five years. The inspector shall file a report with
18 the director describing the current conditions. The wire seal
19 and padlock shall not be removed for any purpose without
20 permission from the inspector.

21 **SECTION 10. REGISTRATION OF EXISTING CONVEYANCES.--By**

22 January 1, 2012, the owner or lessee of every existing
23 conveyance shall register with the director each conveyance
24 owned and operated by the owner or lessee and provide the type
25 of conveyance, its rated load and speed, the name of the

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1 manufacturer, its location, the purpose for which it is used
2 and any additional information that the director requires.
3 After July 1, 2011, all conveyances shall be registered at the
4 time they are completed and placed in service.

5 SECTION 11. COMPLIANCE WITH STATE FIRE PREVENTION AND
6 BUILDING CODES.--Persons licensed pursuant to the Elevator
7 Safety Act shall ensure that installation or service and
8 maintenance of conveyances are performed in compliance with all
9 laws, ordinances and rules, including fire and building codes.

10 SECTION 12. PERMITS.--

11 A. No conveyance shall be erected, constructed,
12 installed or altered within buildings or structures unless a
13 permit has been obtained from the director before the work is
14 commenced and the device conforms to all applicable
15 requirements of the Elevator Safety Act. No permit shall be
16 issued except to a licensee pursuant to the Elevator Safety
17 Act. A copy of the permit shall be kept at the construction
18 site at all times while the work is in progress.

19 B. A permit fee to be deposited into the elevator
20 safety fund shall be set by the director and shall not be
21 refundable.

22 C. Each application for a permit shall be
23 accompanied by copies of specifications and accurately scaled
24 and fully dimensioned plans and shall include:

25 (1) the location of the installation in

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1 relation to the plans and elevation of the building;

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

4 (3) all structural supporting members,
5 including foundations; and

6 (4) all materials to be employed and all loads
7 to be supported or conveyed.

8 D. Permits may be revoked for:

9 (1) false statements or misrepresentations as
10 to the material facts in the application, plans or
11 specifications on which the permit was based;

12 (2) violation of the Elevator Safety Act or
13 any other law, code, ordinance or rule;

14 (3) work detailed under the permit that is not
15 being performed in accordance with the provisions of the
16 application, plans or specifications or the Elevator Safety
17 Act; or

18 (4) failure or refusal of the permittee to
19 comply with a stop work order.

20 E. The term of the permit shall expire no later
21 than six months after the date of issuance of the permit or if
22 the work is suspended or abandoned for a period of sixty days.
23 The director may provide a six-month extension of the term of
24 the permit.

25 SECTION 13. ELEVATOR SAFETY FUND--CREATED.--The "elevator

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1 safety fund" is created in the state treasury. The fund
 2 consists of permit and license fees collected by the director,
 3 income from investment of the fund and money otherwise accruing
 4 to the fund. Money in the fund shall not revert to any other
 5 fund at the end of a fiscal year. The director shall
 6 administer the fund, and money in the fund is appropriated to
 7 the construction industries division of the regulation and
 8 licensing department to administer the provisions of the
 9 Elevator Safety Act. Money in the fund shall be disbursed on
 10 warrants signed by the secretary of finance and administration
 11 pursuant to vouchers signed by the director or the director's
 12 authorized representative.

13 **SECTION 14. CERTIFICATES OF OPERATION--ANNUAL**
 14 **INSPECTIONS--REGISTRATIONS--WAIVER FOR PRIVATE RESIDENCES.--**

15 A. All new conveyance installations shall be
 16 performed by a contractor licensed pursuant to the Elevator
 17 Safety Act. Subsequent to installation, a contractor shall
 18 certify compliance with the Elevator Safety Act. Prior to any
 19 conveyance being used, a property owner or lessee must obtain a
 20 certificate of operation from the director with a fee set by
 21 the director. The contractor shall complete the certificate of
 22 operation for new installations. The certificate of operation
 23 and the fee for newly installed platform lifts and stairway
 24 chair lifts for residences shall be subsequent to an inspection
 25 by an inspector, who may be a third-party inspector.

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1 B. The certificate of operation fee for all new and
2 existing platform and stairway chair lifts for private
3 residences and any renewal certificate fees shall be waived.
4 The director shall inspect all newly installed and existing
5 platform lifts and stairway chair lifts for residences
6 subsequent to an inspection by a private inspector. The
7 director shall provide notice to the owner of the residence
8 where the conveyance is located with relevant information about
9 conveyance safety requirements, including the requirement that
10 the owner contact the director in order to ensure that the
11 conveyance is periodically inspected and made safe before the
12 permit for the conveyance expires. The inspection shall only
13 be done at the request and consent of a private residence
14 owner.

15 C. Certificates of operation shall be renewed
16 annually, except that certificates issued for platform and
17 stairway chair lifts for residences shall be valid for a period
18 of three years. Certificates of operation shall be clearly
19 displayed on or in each conveyance or in the machine room for
20 the benefit of code enforcement staff.

21 **SECTION 15. INSURANCE REQUIRED.--**

22 A. Contractors shall submit to the director an
23 insurance policy or a certified copy of an insurance policy
24 issued by an insurance company to provide general liability
25 coverage of at least one million dollars (\$1,000,000) for

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1 injury or death of any number of persons in any one occurrence;
2 with coverage of at least five hundred thousand dollars
3 (\$500,000) for property damage in any one occurrence; and
4 statutory workers' compensation insurance coverage.

5 B. Inspectors not employed by the director shall
6 submit to the director an insurance policy or a certified copy
7 issued by an insurance company to provide general liability
8 coverage of at least one million dollars (\$1,000,000) for
9 injury or death of any number of persons in any one occurrence;
10 with coverage of at least five hundred thousand dollars
11 (\$500,000) for property damage in any one occurrence; and
12 statutory workers' compensation insurance coverage.

13 C. The policies, certified copies or appropriate
14 certificates of insurance approved by the director shall be
15 delivered to the director before or at the time of the issuance
16 of a license. In the event of any material alteration or
17 cancellation of any policy, at least ten days' notice thereof
18 shall be given to the director.

19 **SECTION 16. ENFORCEMENT.--**

20 A. The director shall ensure annual inspection and
21 testing of all conveyances. The owner of a new or existing
22 conveyance located in any building or structure shall have the
23 conveyance inspected annually by an inspector.

24 B. Subsequent to inspection, the inspector shall
25 supply a property owner or lessee and the director with a

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1 written inspection report describing all code violations, if
2 any. The director shall ensure code compliance.

3 C. Property owners shall, within thirty days from
4 the date of the published inspection report, achieve full
5 compliance with the standards and correct any violations.

6 D. The owner of any conveyance shall ensure that
7 the required tests are performed at intervals in compliance
8 with the American society of mechanical engineers' standards.

9 E. All tests shall be performed by a licensed
10 mechanic pursuant to the provisions of the Elevator Safety Act.

11 F. Any person may make a request for an
12 investigation into alleged violations of the Elevator Safety
13 Act by giving notice to the director of an alleged violation or
14 danger. The notice shall be in writing, shall set forth with
15 reasonable particularity the grounds for the notice and shall
16 be signed by the person making the request. Upon the request
17 of any person signing the notice, the person's name shall not
18 appear on any copy of the notice or any record published,
19 released or made available.

20 G. If the director determines that there are
21 reasonable grounds to believe that a violation or danger
22 exists, the director shall cause to be made an investigation
23 and inspection pursuant to the Elevator Safety Act as soon as
24 practicable to determine if a violation or danger exists. If
25 the director determines that there are no reasonable grounds to

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1 believe that a violation or danger exists, the director shall
2 notify concerned parties in writing of the determination.

3 H. After July 1, 2011 and upon the inspection of
4 any conveyance, if the equipment is found to be in dangerous
5 condition, if there is an immediate hazard to those riding or
6 using the conveyance or if the design or the method of
7 operation in combination with devices used is considered
8 inherently dangerous, in the opinion of the director, the
9 director shall notify the owner of the condition and shall
10 order alterations or additions that are deemed necessary to
11 eliminate the dangerous condition.

12 SECTION 17. LIABILITY.--The Elevator Safety Act shall not
13 be construed to relieve or lessen the responsibility or
14 liability of any licensee owning, operating, controlling,
15 maintaining, erecting, constructing, installing, altering,
16 inspecting, testing or repairing any conveyance covered by the
17 Elevator Safety Act for damages to persons or property caused
18 by any defect.

19 SECTION 18. CIVIL PENALTIES--SUSPENSION OR REVOCATION OF
20 LICENSES.--

21 A. A license issued pursuant to the Elevator Safety
22 Act may be suspended, revoked or subject to civil penalty by
23 the director if:

24 (1) a false statement was made as to a
25 material matter in the application;

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1 (2) there is evidence of fraud,
2 misrepresentation or bribery in securing a license; or

3 (3) there was a failure to notify the director
4 and the owner or lessee of a conveyance or a related mechanism
5 of any condition not in compliance with that act.

6 B. No license shall be suspended, revoked or
7 subject to civil penalty until after a hearing before the
8 director upon notice to the licensee of at least ten days at
9 the last known address appearing on the license, served
10 personally or by registered mail. The notice shall state the
11 date, hour and place of hearing and set forth a statement of
12 facts constituting the grounds for the charges against the
13 licensee. The director shall suspend or revoke the license or
14 dismiss the proceeding.

15 C. A person whose license is revoked, suspended or
16 subject to civil penalty may appeal the determination of the
17 director, who shall within thirty days hold a hearing, for
18 which at least fifteen days' written notice shall be given to
19 all interested parties. The director shall, within thirty days
20 after the hearing, issue a final decision.

21 D. An owner or lessee of a conveyance who is found
22 to be in violation of a provision of the Elevator Safety Act
23 shall be fined in an amount not to exceed one thousand five
24 hundred dollars (\$1,500) or be imprisoned for a period not
25 exceeding thirty days, or both.

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1 SECTION 19. SEVERABILITY.--If any part or application of
2 the Elevator Safety Act is held invalid, the remainder or its
3 application to other situations or persons shall not be
4 affected.

5 SECTION 20. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2011.

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