



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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S.B. 308

132nd General Assembly
(As Introduced)

Sens. Uecker and Yuko

BILL SUMMARY

- Requires elevator mechanics and elevator contractors to obtain a license from the Division of Industrial Compliance.
- Grants the Division of Industrial Compliance rule-making authority with regard to the elevator mechanic and contractor licensing process.
- Requires elevator contractors to maintain certain minimum insurance requirements.
- Requires elevator mechanics to meet initial licensure requirements and to complete continuing education.
- Creates the Elevator Safety Review Board (ESRB) within the Board of Building Standards.
- Grants the ESRB disciplinary authority over elevator mechanics and elevator contractors.
- Requires that elevators in private residences be inspected upon installation and upon sale of the residence.

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CONTENT AND OPERATION

Regulation of conveyance services

The bill enacts a new chapter of Ohio law, Chapter 4785. of the Revised Code, that is based on Revision 1 of National Elevator Industry, Inc.'s Model Elevator Law. The new chapter regulates individuals and entities performing construction, testing, maintenance, alteration, and repair of the following equipment, associated parts, and hoistways, equipment that the bill defines as "**conveyances**":

- Hoisting and lowering mechanisms equipped with a car or platform that moves between two or more landings, including elevators and platform lifts;
- Power-driven stairways and walkways for carrying persons between landings, including escalators and moving walks;
- Hoisting and lowering mechanisms equipped with a car that serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car, including dumbwaiters, material lifts, and dumbwaiters with automatic transfer devices;
- Automatic guided transit vehicles on guideways with an exclusive right-of-way, including automated people movers.¹

¹ R.C. 4785.01(A)(7) and 4785.02(A). See also, National Elevator Industry, Inc., Model Elevator Law, <http://www.neii.org/pdf/model%20elevator%20law%20revision%203.pdf> (accessed June 28, 2018).



The bill also specifically excludes a range of equipment from the new chapter's provisions. Excluded equipment are described below under "**Excluded equipment.**"

Conveyance services requiring a license

The bill defines "**conveyance services**" as erecting, constructing, installing, altering, servicing, repairing, dismantling, removing, or maintaining a conveyance.² With two exceptions, the bill prohibits a person from providing conveyance services, or wiring any conveyance from the mainline feeder terminals on the controller, in buildings or structures unless the person is a licensed elevator mechanic who is either working for, or the owner or a member of, a business entity that holds an elevator contractor's license.

An "**elevator contractor**" is any business entity that has been issued an elevator contractor's license under the bill's new provisions and that is engaged in the business of providing conveyance services. An "**elevator mechanic**" is a *person* who has been issued an elevator mechanic's license, authorizing the person to provide conveyance services and perform electrical work on conveyances, by the Division of Industrial Compliance in the Department of Commerce (Division). If an individual obtains an elevator mechanic's license, no other license is required to wire a conveyance.³

As noted above, there are two exceptions to the licensing requirement for conveyance services. The first provides that a person or entity providing conveyance services, including the wiring of conveyances, exclusively in private residences is not required to obtain a license under the bill. If a person chooses to provide conveyance services in private residences without obtaining a license, however, that person or entity must notify the Division of that fact. The notice must include a list of the person's or entity's employees who provide conveyance services, and the person update the notice as necessary.⁴

The second exception applies to the dismantling of a conveyance. Dismantling is included in the definition of "**conveyance services**," so that process typically requires a license. But, under the bill, the licensing requirement does not apply to a conveyance that is to be destroyed as the result of a complete demolition of a secured building or

² R.C. 4785.01(A)(8).

³ R.C. 4785.01(A)(12) through (14) and 4785.03(A) and (B).

⁴ R.C. 4785.03(C).



structure or where the hoistway or wellway is demolished back to the basic support structure and where no access is permitted therein.⁵

The licensing process

The bill mandates that entities and individuals wishing to provide conveyance services apply for an elevator contractor's or elevator mechanic's license. Application is to be made to the Division of Industrial Compliance on a form provided by the Division. An application must contain all of the following:

- Contact information relating to the applicant:
 - If the applicant is an individual or sole proprietor, the name, residence address, and business address of the applicant;
 - If the applicant is a partnership, the name, residence address, and business address of each partner;
 - If the applicant is a domestic corporation, the name and business address of the corporation and the name and residence address of the principal officer of the corporation;
 - If the applicant is a corporation other than a domestic corporation, the name and address of an agent located in Ohio who is authorized to accept service of process and official notices;
- The number of years the applicant has engaged in the business of conveyance services;
- If the applicant is applying for an elevator contractor's license, both of the following:
 - The approximate number of persons, if any, to be employed by the applicant, and if applicable, satisfactory evidence that the employees are or will be covered by workers' compensation insurance (see **COMMENT**);
 - Satisfactory evidence that the applicant and all employees are, or will be, covered by general liability, personal injury, and property damage insurance;

⁵ R.C. 4785.01(A)(8) and 4785.03(D).



- A description of the criminal convictions and pleas of guilty of the applicants and each employee, if any, as verified by a criminal records check;
- Any other information that the Division considers appropriate.⁶

Licensing qualifications

The Division of Industrial Compliance may only issue an elevator mechanic's license if the applicant for the license demonstrates one of the following:

- An acceptable combination of documented experience and education credits, as follows:
 - Not less than three years of work experience in the elevator industry, in construction, maintenance, service, repair, or any combination thereof, as verified by current and previous employers licensed to do business in Ohio;
 - Satisfactory completion of a written examination administered by the Division, or by a testing agency approved by the Division, on the most recent referenced codes and standards;
- Acceptable proof that the applicant has worked as an elevator construction, maintenance, or repair person, consisting of having worked without direct and immediate supervision for an elevator contractor authorized to do business in Ohio for a period of not less than three years immediately prior to the bill's effective date, provided that the applicant applies for a license within one year of the bill's effective date;
- A certificate of completion or other evidence of having successfully passed the mechanic examination of a nationally recognized training program for the elevator industry, such as the National Elevator Industry Educational Program or the Certified Elevator Technician Program of the National Association of Elevator Contractors;
- A certificate of completion of an apprenticeship program for elevator mechanics that has standards substantially equal to those of the bill and that is registered with the U.S. Department of Labor's Bureau of Apprenticeship and Training, or a state apprenticeship council;

⁶ R.C. 4785.04(A) through (C).

- A valid license from a state having standards substantially equal to those of the bill, upon application and without examination.⁷

In addition to the above listed qualification requirements, the bill establishes several disqualifying factors that require the Division to deny an elevator mechanic's license. Those are:

- Conviction of, or a guilty or no contest plea to, a crime of moral turpitude (a term defined in continuing law to encompass serious criminal offenses, including murder, sexually oriented offenses, and certain offenses of violence) or a disqualifying offense (additional offenses designated by the Superintendent of Industrial Compliance, the conviction of which disqualifies a person from obtaining or retaining a license under the new licensing law);
- Violation of any provision in the bill's new licensing chapter or any rule adopted pursuant to it;
- Demonstrated incompetence or untrustworthiness;
- Fraud, misrepresentation, or deception in the conduct of business;
- Fraud, deception, or misrepresentation in efforts to obtain or renew a license;
- Fraud or misrepresentation by an applicant in obtaining or attempting to obtain an order, ruling, or authorization from the Division of Industrial Compliance.⁸

With respect to elevator contractor's licenses, as opposed to mechanic's licenses, the Division of Industrial Compliance may issue a license to a business entity only if the applicant employs a licensed elevator mechanic and presents proof of compliance with the bill's insurance provisions. Those provisions require insurance coverage that, at the least, provides \$1 million for injury or death of any number or people involved in any one occurrence, \$500,000 for property damage in any one occurrence, and workers' compensation insurance coverage (see **COMMENT**). Proof of insurance must be provided at the time of the license's issuance or renewal, and if any required policy is

⁷ R.C. 4785.04(D) and (G).

⁸ R.C. 4758.04(E) and 4785.08(A)(2), and R.C. 4776.10, not in the bill.



materially altered or cancelled, the bill requires notice to the Division of Industrial Compliance.⁹

Licenses issued pursuant to the bill are valid for two years, and may be renewed.¹⁰

License renewals

The Division of Industrial Compliance may renew a license if the licensee does all of the following:

- Submits an application for license renewal on a form prescribed by the Division;
- Pays the license renewal fee established by the Division;
- Submits evidence that the applicant has completed the required continuing education coursework.

For a contractor's license, the applicant also must submit proof that the applicant is in compliance with the insurance requirements.¹¹

If a licensee commits a disqualifying offense described above under "**Licensing qualifications**," the Division may not renew the license.¹²

Continuing education

As described above, the bill requires licensees to complete continuing education. The continuing education must instruct licensees on Division of Industrial Compliance rules and standards, consist of not less than eight hours of instruction, and be taught by instructors through continuing education providers approved by the Division. The licensee must attend and complete the courses within one year immediately preceding the scheduled date for the license renewal.¹³ A continuing education instructor is exempt from the continuing education requirement if the licensee was qualified as an

⁹ R.C. 4785.04(F) and 4785.07.

¹⁰ R.C. 4785.04(H).

¹¹ R.C. 4785.041(A).

¹² R.C. 4785.041(F).

¹³ R.C. 4785.041(A)(3) and (B).

instructor at any time during the year immediately preceding the scheduled date for the license renewal.¹⁴

Temporary continuing education waiver

A licensee who is unable to complete the required continuing education coursework before the license expires due to a temporary disability may apply for a temporary continuing education waiver.

The licensee may apply for the waiver in a form prescribed by the Division. The form is to be signed by the applicant and be accompanied by a certified statement from a competent physician attesting to the temporary disability. Any falsification of the application is considered perjury. If the Division grants the waiver, the licensee's license does not expire but is placed on inactive status.

On the termination of the temporary disability, the licensee is to submit to the Division a certified statement from the same physician, if practicable, attesting to the termination of the temporary disability. The Division must then take the licensee's license off inactive status and issue the licensee a 90-day waiver sticker, to be affixed to the license. The licensee may then perform the tasks the license authorizes the licensee to perform but the licensee must meet the continuing education requirement during this 90-day period. If the licensee fails to meet the requirement in this time, the license will be deemed to be expired.¹⁵

Continuing education providers

The bill requires approved continuing education providers to keep uniform records, for a period of ten years, of attendance of licensees in a format approved by the Division of Industrial Compliance. The records must be available for inspection by the Division on request.

Approved training providers are responsible for the security of all attendance records and certificates of completion. Falsifying or knowingly allowing another to falsify attendance records or certificates of completion is grounds for suspension or revocation of Division approval.¹⁶

¹⁴ R.C. 4785.041(C).

¹⁵ R.C. 4785.401(D).

¹⁶ R.C. 4785.401(E).



Emergency licenses

If the Division of Industrial Compliance determines that an emergency exists due to disaster or work stoppage, and that there are not enough Ohio elevator mechanic licensees to cope with the emergency, the Division is required to declare a state of emergency and respond by issuing temporary emergency licenses. During the state of emergency, any person found by a licensed elevator contractor to have an acceptable combination of documented experience and education to perform conveyance services without direct and immediate supervision may perform conveyance services without an elevator mechanic's license.

Such a person is to seek an emergency elevator mechanic's license from the Division within five business days after commencing work that would otherwise require an elevator mechanic's license. The elevator contractor associated with the person must furnish proof of competency as the Division may require. The Division is to charge no fee for issuing or renewing an emergency license.

An emergency elevator mechanic's license is valid for 45 days and may be renewed for the duration of the state of emergency. The Division may restrict the validity of an emergency license to a particular conveyance or geographical area. Otherwise, the licensee has the rights and privileges of an elevator mechanic's license.¹⁷

Licensee shortage

The bill also provides for a shortage of licensed elevator mechanics. The bill requires an elevator contractor to notify the Division when there are no licensed elevator mechanics available to provide conveyance services and may request that the Division issue temporary elevator mechanic's licenses to persons certified by the contractor to have an acceptable combination of documented experience and education to provide conveyance services without direct and immediate supervision.

Any such person is to then immediately seek a temporary elevator mechanic's license from, and pay an application fee as set by, the Division. If the Division is satisfied with the person's qualifications, it must issue a temporary elevator mechanic's license to the person. A temporary license is valid only for a specified term set by the Division, and that term must be noted on the license. Such a temporary license is only valid while the licensee is employed by the elevator contractor that certified the

¹⁷ R.C. 4785.05.

individual as being qualified. A temporary elevator mechanic's license is renewable in accordance with rules adopted by the Division of Industrial Compliance.¹⁸

Authority and responsibility of the Superintendent of Industrial Compliance

The bill requires the Superintendent of Industrial Compliance to, in accordance with the Administrative Procedure Act, adopt rules pertaining to the issuance and renewal of elevator mechanic's licenses and elevator contractor's licenses, and a list of offenses the conviction of which disqualifies a person from obtaining, renewing, or retaining a license. The bill also allows the Superintendent to adopt rules pertaining to:

- Assisting in the development of public awareness programs;
- Classifications or subclassifications of licenses for elevator mechanics and elevator contractors;
- Monitoring inspections and testing in order to ensure satisfactory performance by licensees;
- Fee schedules for elevator mechanic and elevator contractor licenses, provided that fees must reflect the actual costs and expenses necessary to administer the bill's new licensing chapter;
- Standards for the approval of license testing agencies;
- Standards for the approval of continuing education and training providers;
- Any other rules necessary to administer and carry out the bill's new licensing chapter.

The bill also prohibits the Superintendent of Industrial Compliance from adopting rules relating to the construction, maintenance, and repair of elevators, except as they pertain to licensing individuals under the new licensing chapter. Outside of that prohibition, and the mandatory and permissive rule-making authority discussed above, the bill provides the Superintendent with a broad grant of authority. Specifically, the bill grants the Superintendent the authority to exercise such other powers and duties as are necessary to carry out the intent of the new licensing chapter.¹⁹

¹⁸ R.C. 4785.051.

¹⁹ R.C. 4785.08.



Fees

The bill establishes that all moneys collected by the Division of Industrial Compliance in administering the bill's licensing provisions for elevator mechanics and contractors are to be credited to the Industrial Compliance Operating Fund in the state treasury. Under continuing law, the Department of Commerce is directed to use the Industrial Compliance Operating Fund to pay for the Division of Industrial Compliance's operating and administrative expenses.²⁰

Standard of care for licensees

The bill states that licensees must ensure that installation, service, and maintenance of a conveyance is performed in accordance with state and local law and with generally accepted standards referenced in such laws or related rules.

When any material alteration is made to a conveyance, the licensees involved must ensure that the conveyance adheres to the appropriate conveyance standard for the alteration.²¹

Excluded equipment

The bill also specifically excludes a range of equipment from the new chapter's provisions. Those are:

- Material hoists;
- Manlifts;
- Mobile scaffolds, towers, and platforms;
- Powered platforms and equipment for exterior and interior maintenance;
- Conveyors and related equipment;
- Cranes, derricks, hoists, hooks, jacks, and slings;
- Industrial trucks;
- Portable equipment, except for portable escalators;

²⁰ R.C. 121.084.

²¹ R.C. 4785.06.



- Tiering or piling machines used to move materials to and from storage located and operating entirely within one story;
- Equipment for feeding or positioning materials at machine tools, printing presses, and similar machines;
- Skip or furnace hoists;
- Wharf ramps;
- Railroad car lifts or dumpers;
- Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing an elevator by a contractor licensed in Ohio;
- Chairlifts;
- Any conveyance installed in a showroom that is for demonstration purposes only.²²

The Elevator Safety Review Board

The bill creates the Elevator Safety Review Board (ESRB) for the purpose of investigating violations of the new licensing chapter, holding disciplinary administrative hearings, and assessing penalties. ESRB is created within the Board of Building Standards (BBS), which is itself in the Department of Commerce.²³

Disciplinary actions

The bill authorizes ESRB to suspend or revoke a license or subject the licensee to a civil penalty on verification that the licensee has:

- Been convicted of, or pled guilty to, a crime of moral turpitude or a disqualifying offense;
- Violated any provision of the new licensing chapter;
- Violated any rule adopted pursuant to that chapter;
- Demonstrated incompetence or untrustworthiness;

²² R.C. 4785.02(B).

²³ R.C. 4785.09.

- Engaged in fraud, misrepresentation, or deception in the conduct of business;
- Obtained or attempted to obtain an elevator mechanic's or contractor's license, or renewal of such a license, by means of fraud, deception or misrepresentation;
- Obtained or attempted to obtain an order, ruling, or authorization from the Division of Industrial Compliance by means of fraud or misrepresentation.²⁴

Any administrative action taken is to be made only after ESRB holds a hearing in accordance with the Administrative Procedure Act. Notice of the hearing is to be provided to the licensee in question at least ten days before the hearing at the last known address appearing on the license, served personally or by registered mail. The notice must state the date, hour, and place of the hearing and set forth a statement of facts constituting the grounds for the charges.

If ESRB revokes or suspends the license or subjects the licensee to a civil penalty, the licensee may appeal the determination to an ESRB-appointed hearing officer. The officer must hear the appeal within 30 days and provide written notice to all interested parties of the hearing within 15 days after the hearing. The officer must issue a final decision on the appeal within 30 days after the hearing.²⁵

Any person may request an investigation into an alleged violation of the bill's provisions by giving notice to ESRB of a potential violation or danger. The notice must be in writing, set forth with reasonable particularity the grounds for the notice, and be signed by the person making the request. Upon request, the signer's name is to be omitted from any copy of the notice or any record published, released, and not made available.²⁶

If, upon receipt of a request, ESRB determines that there are reasonable grounds to believe that a violation or danger exists, the bill requires ESRB to investigate. After the investigation, if ESRB determines that there are no reasonable grounds to believe

²⁴ R.C. 4785.091(A).

²⁵ R.C. 4785.091(B) and (C).

²⁶ R.C. 4785.092(A).

that a violation or danger exists, it must notify the party in writing of that determination.²⁷

Penalties

A person who recklessly violates any of the provisions of the new licensing chapter will be fined not more than \$1,500, sentenced to a jail term not exceeding 30 days, or both.²⁸

ESRB - membership and structure

ESRB consists of nine members, including the Director of Commerce or the Director's designee, a BBS representative, and the following individuals, appointed by the Governor:

- One representative of a major elevator manufacturing company;
- One representative of an elevator servicing company;
- One representative of the architectural design or elevator consulting profession;
- One representative of the general public;
- One representative of Ohio municipalities;
- One representative of building owners or managers;
- One representative of the building trade, consisting of individuals providing conveyance services.

The bill does not establish a specific date by which the Governor must appoint the initial members. The term of those members appointed to the ESRB is three years. Vacancies are to be filled in the same manner as the original appointments. If any appointed board member is absent from three consecutive meetings, the member's seat is to be deemed vacant. All ESRB members serve without salary, but will be reimbursed for all expenses necessary in the performance of their duties.

ESRB is required to meet and organize within ten days after the appointment of its members and at this first meeting elect from its members a secretary to serve for a term as prescribed in ESRB rules. The Governor is to appoint one ESRB member to

²⁷ R.C. 4785.092(B).

²⁸ R.C. 4785.99.



serve as the chair. A majority constitutes a quorum, and the chair will be the deciding vote in the event of a tie vote.

ESRB is to meet not less than once a month and as often as it considers necessary for the consideration of code regulations, appeals, variances, and for the transaction of other business as properly may come before it. Special meetings are to be called as prescribed in rules adopted by ESRB.²⁹

Elevator inspections

New inspection regime for private residences

Current law contains an inspection regime for elevators. It requires passenger elevators, escalators, moving walks, and freight elevators to be inspected twice a year (though the Board of Building Standards can reduce the frequency for certain low-capacity passenger elevators). Permanently installed power dumb-waiters, hoists, and other lifting or lowering apparatus that are not designed to carry people must be inspected once a year.³⁰

The bill revises the inspection regime for elevators installed in private residences. Specifically, it establishes that such elevators must only be inspected for an initial certificate of inspection and then subsequently if title to the private residence is to be transferred. In that case, the bill requires that any elevators in the private residence be inspected no more than 60 days before the date of sale.³¹

When an elevator in a private residence is inspected, the bill requires the inspector to provide the owner with notice of the hazards of altering or repairing an elevator and the liability that the owner could potentially face for making such an alteration or repair without the proper training or license. The owner must sign to acknowledge receipt of the notice, the exact form of which is to be adopted, in rule, by the Division of Industrial Compliance.³²

The bill makes related changes to the definition of "**elevator**." Current law states that the term means a hoisting and lowering apparatus equipped with a car, cage, or platform which moves on or between permanent rails or guides and serves two or more fixed landings in a building or structure to which the Ohio law requiring buildings to be

²⁹ R.C. 4785.09.

³⁰ R.C. 4105.10(A).

³¹ R.C. 4105.10(B) and 4105.15.

³² R.C. 4105.101.

safe and sanitary applies. Residential buildings appear to be covered by that law, but the bill amends the definition of "elevator" to specifically include hoisting and lowering apparatus in private residences. The bill also specifically excludes chairlifts in private residences, as well as lifting devices installed in showrooms for demonstration purposes, from the definition.³³

New generally applicable testing requirement

The bill adds a new requirement that the owners of all conveyances, not just elevators, have an elevator contractor licensed under the bill's new licensing provisions ensure that required tests are conducted at intervals in compliance with certain engineering standards referenced in the bill (ASME A17.1, ASME A18.1, and ASCE 21). All such tests must be performed by a licensed elevator mechanic.³⁴

Standards referenced in the bill

The bill's terms reference the definitions in the applicable engineering standards from the American Society of Civil Engineers (ASCE), the American Society of Mechanical Engineers (ASME), and the American National Standard Code. As those definitions are very technical and often are used to describe what the bill does not cover, they are omitted from this analysis.

General Assembly intent

The bill states that the General Assembly's intent in enacting the bill is to provide for the safety of installers, maintainers, and users of elevators and other conveyances, as well as to promote public safety awareness regarding the same. The bill states that the use of unsafe and defective lifting devices imposes a substantial probability of serious and preventable injury to employees and the public. It further states that, the prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of Ohio. Elevator personnel performing work covered by the bill must, by documented training, experience, or both, be familiar with the operation and safety functions of the components and equipment. Under the bill, training and experience must include recognizing the safety hazards and performing the procedures to which they are assigned in conformance with the bill's requirements. The bill is to be considered the minimum standards for elevator and conveyance personnel.³⁵

³³ R.C. 4105.01(A) and R.C. 3781.06, not in the bill.

³⁴ R.C. 4105.30.

³⁵ Section 3.



Definitions

As used in this analysis:

"**Automated people mover**" means an installation as defined in the Automated People Mover Standards adopted by the American Society of Civil Engineers, commonly referred to as ASCE 21.

"**Business entity**" includes a sole proprietorship, partnership, and corporation.

"**Elevator**" means a conveyance defined as an elevator in the Elevators and Escalators Safety Code and the Platform Lifts and Stairway Chairlifts Safety Standards (the American National Standard Code commonly referred to as ASME A18.1).

"**Elevators and escalators safety code**" means the American National Standard Code commonly referred to as ASME A17.1/CSA B44, or its successor.

"**Escalator**" means a conveyance defined as an escalator in the Elevators and Escalators Safety Code.

"**Material alteration**" means an alteration, as defined in the standards related to the item altered.

"**Private residence**" means a distinct building or a unit in a multiple dwelling building that is occupied by members of a single-family unit.

"**Repair**" means a repair as defined in the appropriate reference standard that does not require a permit.

COMMENT

This bill is based on Revision 1 of National Elevator Industry, Inc.'s Model Elevator Law. That Model Law appears to have been designed for states that use private workers compensation insurance; Ohio uses a state-run program. Article II, Section 35 of the Ohio Constitution, and Revised Code Chapters 4121. to 4131., create a state workers' compensation program supported by compulsory employer contributions. R.C. 4123.35 and 4135.351 permit the Administrator of Workers' Compensation to certify certain employers to self-insure, but even then, the state provides coverage should the employer fail to provide the necessary coverage. It is unclear what form of evidence would be required to be submitted.

HISTORY

ACTION

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