SPONSOR: Rep. Osienski & Sen. Walsh
Sen. Townsend

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 449
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 24 AND TITLE 29 OF THE DELAWARE CODE RELATING TO ELEVATOR MECHANICS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Title 24 of the Delaware Code, by creating a new chapter, by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 61. ELEVATOR MECHANICS

§ 6101. Purpose.

(a) The primary purpose of this chapter is to protect the general public and persons working in the elevator industry, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered.

(b) The secondary purposes are to maintain minimum standards of competency and to maintain certain standards in the delivery of services to the public. In meeting its objectives, the Board will develop standards assuring professional competence, will monitor complaints brought against mechanics regulated by the Board, will adjudicate at formal hearings, will promulgate rules and regulations, and will impose sanctions where necessary against licensed mechanics.

§ 6102. Definitions.

As used in this chapter:

(1) “Board” means the Board of Elevator Mechanics established in this chapter.

(2) “Division” means the Division of Professional Regulation.

(3) “License” means the certificate issued by the Board.

(4) “Master elevator mechanic” means an individual, licensed by the Board, to plan, estimate, layout, perform, or supervise the installation, erection, replacement, service, and repair of any elevator in any structure.

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(5) “Substantially related” means the nature of the criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the work of a master elevator mechanic.

(6) “Unlicensed practitioner” means any person who engages in the occupational practice of a master elevator mechanic and has not been granted a license by the Board.

§ 6103. Board of Elevator Mechanics; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Elevator Mechanics, which shall administer and enforce this chapter.

(b) Members of the Board shall be appointed by the Governor. The Board shall consist of five members who are residents of the State of Delaware. One member will be a public member, who shall serve at the pleasure of the Governor. The remaining 4 members, will be licensed in the State as master electrician special elevator or master elevator mechanic, and will be from the following:

(1) One individual who represents the interests of a major elevator, escalator, or moving walkway manufacturing company.

(2) One individual who is primarily engaged in the business of elevator, escalator, or moving walkway installation, alteration, repair, or maintenance.

(3) One individual who represents the interests of elevator inspection, consulting or engineering firms.

(4) One representative from a major labor organization that represents elevator mechanics and apprentices who work in the elevator industry.

(c) Except for the public member, each member shall serve a term of 3 years, and may succeed himself or herself for 1 additional term. Each term of office shall expire on the date specified in the appointment; however, the Board member will remain eligible to participate in Board proceedings unless and until replaced by the Governor.

(d) Only an individual who has never served on the Board may be appointed to the Board for 2 consecutive terms. No individual who has been twice appointed to the Board or who has served on the Board for 6 years within a 9-year period, may be re-appointed to the Board until an interim period of at least 1 term has expired since the individual last served.

(e) Any act or vote by an individual appointed in violation of this section shall be invalid. An amendment or revision of this chapter is not sufficient cause for any appointment or attempted appointment in violation of subsection (d) of this section, unless such an amendment or revision amends this section to permit such an appointment.

(f) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency or neglect of duty. A member subject to a disciplinary hearing shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court.

(g) Any member, who is absent without adequate reason for 3 consecutive meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall be guilty of neglect of duty.

(h) Each member of the Board shall be reimbursed for all expenses involved in each meeting, including travel, and in addition shall receive reasonable compensation per meeting attended in an amount determined by the Division.

§ 6104. Organization; meetings; officers; quorum.

(a) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such other times as the president deems necessary or as requested by a majority of the Board.

(b) The Board annually shall elect a president and vice-president. Each officer will serve for 1 year and may not succeed himself or herself for more than 2 consecutive terms.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business.

(d) Minutes of all meetings must be recorded and the Division must maintain copies of the minutes. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared will be made. The person requesting the transcript will incur the cost of preparing any transcript.

§ 6105. [Reserved.]

§ 6106. Powers and duties.

(a) The Board of Elevator Mechanics has the authority to perform the following:

(1) Formulate rules and regulations with proper notice to those affected. All rules and regulations must be promulgated in accordance with the procedures specified in the Administrative Procedures Act under Chapter 101 of Title 29. Each rule or regulation shall implement or clarify a specific section of this chapter.

(2) Designate the application form to be used by all applicants and process all applications.

(3) Designate the written standardized examination, as approved by the Division and administered and graded by the testing service, to be taken by all persons applying for licensure.

(4) Evaluate the credentials of all individuals applying for a license in order to determine whether such individuals meet the qualifications for licensing set forth in this chapter.

(5) Grant licenses and renew licenses of all individuals who meet the qualifications for licensure.

(6) Establish rules and regulations concerning continuing education standards required for license renewal.

(7) Evaluate certified records to determine whether an applicant for licensure, who previously has been licensed, certified or registered in another jurisdiction as an elevator mechanic, has engaged in any act or offense that would be grounds for disciplinary action under this chapter, and whether there are disciplinary proceedings or unresolved complaints pending against such applicant for such acts or offenses.

(8) Refer all complaints from licensees and the public concerning a licensed elevator mechanic, or concerning practices of the Board, or of the profession, to the Division for investigation under § 8735 of Title 29 and assign a member of the Board to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint.

(9) Conduct hearings and issue orders in compliance with the Administrative Procedures Act under Chapter 101 of Title 29.

(10) Require, if necessary, that a licensed elevator mechanic take over the work done by an unlicensed practitioner, or if the work is completed, that the work be inspected by an inspection agency, within 5 working days after receipt of the Board's request.

(11) Designate and impose the appropriate sanction or penalty, when the Board has determined, after a hearing, that penalties or sanctions should be imposed.

(b) The Board shall require that all persons receiving a license, display on the vehicles used in the performance of their work, the words "Licensed Elevator Mechanic," and the number assigned to them, in not less than 3-inch letters and numbers.

(c) The Board shall promulgate regulations specifically identifying those crimes which are substantially related to the work of an elevator mechanic.

§ 6107. License required.

(a) No individual may engage in the practice of providing elevator services or hold himself or herself out to the public in this State as being qualified to act as a licensed elevator mechanic, or otherwise assume or use any title or description conveying or tending to convey the impression that the individual is qualified to act as a licensed elevator mechanic, unless such individual has been duly licensed under this chapter.

(b) Whenever a State license to practice as an elevator mechanic has expired or been suspended or revoked, it shall be unlawful for the individual to act as an elevator mechanic in this State.

§ 6108. Qualifications of applicant

(a) An applicant, who is applying for licensure as an elevator mechanic under this chapter, shall submit evidence, verified by oath and satisfactory to the Board, that such individual:

(1) For licensure as a master elevator mechanic an applicant shall have knowledge of elevator installation, maintenance and repair in the residential, commercial and industrial areas, and in addition must have:

a. Six years' full-time experience under the supervision of a licensed master elevator mechanic; or

b. Eight thousand hours of full-time experience under the supervision of a licensed master elevator mechanic, plus 576 hours of related instruction, or other approved training verified by a certificate of completion of apprenticeship from a lawful, registered apprenticeship program of any state; or

c. Four years' full-time experience under the supervision of a licensed master elevator mechanic and 6000 hours of technical training.

(2) After fulfilling the applicable experience and training requirements of this section, an applicant applying for licensure as a master elevator mechanic must achieve a passing score on the written third party witnessed standardized examination for licensure as determined by the Board in rules and regulations approved by the Division.

(3) Has not been the recipient of any administrative penalties regarding that individual's practice as an elevator mechanic, including, but not limited, to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and has not entered into any "consent agreements" which contain conditions placed by any state on that person's professional conduct and practice, including any voluntary surrender of a license. The Board may determine after a hearing whether such administrative penalty is grounds to deny licensure.

(4) Does not have any impairment related to drugs or alcohol that would limit the applicant's ability to act as an elevator mechanic in a manner consistent with the safety of the public.

(5) Does not have a criminal conviction record for an offense substantially related to providing elevator mechanical services. Applicants who have criminal conviction records must request appropriate authorization to provide information about the conviction directly to the Board. If, after considering the factors set forth under § 8735 (x)(3) of Title 29, through a hearing or review of documentation, the Board determines that granting a waiver would not create an unreasonable risk to public safety, the Board shall waive the requirements of this paragraph.

(6) Has no disciplinary proceedings or unresolved complaints pending against in any jurisdiction where the applicant has previously been or currently is licensed or registered.

(b) All evidence of experience shall be submitted on written affidavit forms provided by the Board.

(c) All evidence of education shall be submitted by written certification from the educational institution attended.

(d) When the Board finds that an applicant has been intentionally fraudulent, or that false information has been intentionally provided, it shall report its findings to the Attorney General for further action.

(e) When an application has been refused or rejected and the applicant believes the Board has acted without justification, has imposed higher or different standards for the applicant than for other applicants or licensees, or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(f) An individual who is in possession of a master electrician special elevator license on or before [the effective date of this Act] is eligible for a master elevator mechanic license without meeting the requirements set forth under paragraphs (a)(1) and (2) of this section.

§ 6109. Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. At the beginning of each licensure biennium, the Division, or any other State agency acting on its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure or biennium.

§ 6111. Grounds for discipline.

(a) A licensed master elevator mechanic shall be subject to disciplinary actions under § 6113 of this title, if, after a hearing, the Board finds that the practitioner has:

(1) Employed, or knowingly cooperated in, fraud or material deception in order to acquire a license as an elevator mechanic, has impersonated another person holding a license, or allowed another person to use the practitioner's license, or aided or abetted a person not licensed as an elevator mechanic to represent himself or herself as a licensed elevator mechanic.

(2) Illegally, incompetently or negligently provided elevator mechanical services.

(3) Performed service on an elevator, as defined in this title, without a license.

(4) Been convicted of any offense, the circumstances of which substantially relate to the work of a master elevator mechanic. A certified court copy of a record of conviction shall be conclusive evidence of conviction.

(6) Engaged in an act of consumer fraud or deception.

(7) Violated this chapter or any rule or regulation established under this chapter.

(8) Had a license as an elevator mechanic suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record, and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the disciplinary acts defined in this

chapter. Every individual licensed as a master elevator mechanic in this State, as a condition of licensure, has given consent to the release of disciplinary information by all other jurisdictions, and to waiver of all objections to the admissibility of previously adjudicated evidence of such disciplinary acts or offenses.

(9) Failed to notify the Board that their license as an elevator mechanic in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation in another state shall be considered as conclusive evidence.

(b) In accordance with Title 29, Chapter 101, no license shall be restricted, suspended or revoked by the Board, and no individual's right to practice as an elevator mechanic shall be limited by the Board, until the individual has been given notice, and an opportunity to be heard, in accordance with Title 29, Chapter 101.

§ 6112. Complaints.

All complaints shall be received and investigated by the Division under § 8735 of Title 29 and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

§ 6113. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 6111 of this title applies to an individual or licensee regulated by this chapter:

(1) Issue a letter of reprimand.

(2) Place an individual on probationary status, and require the individual to do 1 or more of the following:

a. Report regularly to the Board upon the matters, which are the basis of the probation.

b. Limit all practice and professional activities to those areas prescribed by the Board.

(3) Suspend a license.

(4) Revoke a license.

(5) Impose a monetary penalty as follows:

a. No more than $1,500 for each violation of § 6111(a)(2) and (a)(4) through (9) of this title.

b. No less than $4,500 for violations of § 6111(a)(1) and (a)(3) of this title.

(b) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies, which required such action have been remedied.

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the individual's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board President or the Board President's designee. An order temporarily suspending a license may not be issued

unless the individual or the individual's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the individual or the individual's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended individual requests a continuance of the hearing date. If the temporarily suspended individual requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. An individual whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the individual received notification of the decision to temporarily suspend the individual's license.

§ 6114. Reinstatement of a suspended license; removal from probationary status.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee has taken the prescribed corrective actions and otherwise satisfied all of the conditions of the suspension or probation.

(b) Applicants for reinstatement must pay the appropriate fees and submit documentation required by the Board as evidence that all the conditions of a suspension or probation have been met. Proof that the applicant has met the continuing education requirements of this chapter may also be a required condition for reinstatement.

§ 6115. Duty to report.

(a) An owner, operator, manager, or supervisor of a business performing elevator mechanical services shall have a duty to report to the Board, if such owner, operator, manager, or supervisor has knowledge that an individual working for or under his or her supervision is performing elevator work and does not have the proper license under this chapter.

(b) The report required pursuant to this section must be made in writing to the Board within 10 days of the owner, operator, manager, or supervisor having the required knowledge and must contain the name of the person performing the electrical work without a license.

(c) An owner, operator, manager, or supervisor of a business performing elevator mechanical services must check to see if an employee or independent contractor has the proper license under this chapter before allowing such employee or independent contractor to perform work for such owner, operator, manager or supervisor.

§ 6121. Penalty.

An individual not currently licensed as an elevator mechanic or exempt from licensure under this chapter, who is determined to be performing elevator mechanical work, or assuming or using a title or description conveying, or tending to

convey, the impression that the individual is qualified to perform elevator work, shall be guilty of a misdemeanor. For a first offense, the individual shall be fined not less than $500 nor more than $1,500 for each offense. For a second or subsequent conviction, the fine shall be not less than $1,500 nor more than $2,300 for each offense. Justice of the Peace Courts shall have jurisdiction over all violations of this chapter.

§ 6122. Exceptions.

Nothing in this chapter shall be construed to prevent the performance of service and repair of any elevator in any structure by individuals working in a manufacturing or industrial facility, who are all of the following:

(a) Recognized by their company as a person responsible for repairs, maintenance, or service.

(b) Registered with the Board.

(c) Working under the supervision of a master elevator mechanic or a master electrician with a special elevator license.

Section 2. Amend § 10161, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10161. State agencies affected.

(a) This chapter shall apply only to the following agencies:

(51) Board of Elevator Mechanics

Section 3. Amend § 8735, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8735. Division of Professional Regulation.

(a) The Division of Professional Regulation shall have the powers, duties and functions set forth in this section. The Division shall be responsible for the administrative, ministerial, budgetary, clerical and exclusive investigative functions (including but not limited to the appointment, removal, compensation and duties of employees) as provided by law of the following commissions, boards and agencies, with the exception that the Secretary of State shall not be precluded from entering into a memorandum of understanding with the Secretary of the Department of Health and Social Services for the purpose of allowing employees of the Department of Health and Social Services to function as inspectors, investigators and administrative support for the Board of Pharmacy:

(33) Manufactured Home Installation Board as set forth in Chapter 44 of Title ~~24; and~~ 24.

(34) Board of Home Inspectors as set forth in Chapter 41 of Title ~~24.~~ 24; and

(35) Board of Elevator Mechanics as set forth in Chapter 61 of Title 24.

Section 4. This Act takes effect upon enactment and is implemented upon notice by the Division of Professional Regulations to the Registrar of Regulations that final rules and regulations are in place.