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**SUBSTITUTE SENATE BILL 5412**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** Senate Labor, Commerce & Consumer Protection (originally sponsored by Senators Keiser, Kohl-Welles, Kline, Roach, Conway, Hobbs, and Chase)

READ FIRST TIME 02/03/12.

1       AN ACT Relating to whistleblowing in the conveyance workplace;  
2 amending RCW 70.87.020; reenacting and amending RCW 70.87.010; and  
3 adding a new section to chapter 70.87 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       **Sec. 1.** RCW 70.87.020 and 2003 c 143 s 10 are each amended to read  
6 as follows:

7       (1) The purpose of this chapter is to provide for safety of life  
8 and limb, to promote safety awareness, and to ensure the safe design,  
9 mechanical and electrical operation, and inspection of conveyances, and  
10 performance of conveyance work, and all such operation, inspection, and  
11 conveyance work subject to the provisions of this chapter shall be  
12 reasonably safe to persons and property and in conformity with the  
13 provisions of this chapter and the applicable statutes of the state of  
14 Washington, and all orders, and rules of the department. The use of  
15 unsafe and defective conveyances imposes a substantial probability of  
16 serious and preventable injury to employees and the public exposed to  
17 unsafe conditions. The prevention of these injuries and protection of  
18 employees and the public from unsafe conditions is in the best interest  
19 of the people of this state. It is the policy of the legislature that

1 employees should be protected from workplace reprisal or retaliatory  
2 action for the opposition to or reporting in good faith of practices  
3 that may violate the provisions of this chapter and the rules  
4 promulgated hereunder, or of the safety, installation, repair, or  
5 maintenance policies of their employers. Personnel performing work  
6 covered by this chapter must, by documented training or experience or  
7 both, be familiar with the operation and safety functions of the  
8 components and equipment. Training and experience must include, but  
9 not be limited to, recognizing the safety hazards and performing the  
10 procedures to which the personnel performing conveyance work covered by  
11 this chapter are assigned in conformance with the requirements of this  
12 chapter. This chapter establishes the minimum standards for personnel  
13 performing conveyance work.

14 (2) This chapter is not intended to prevent the use of systems,  
15 methods, or devices of equivalent or superior quality, strength, fire  
16 resistance, code effectiveness, durability, and safety to those  
17 required by this chapter, provided that there is technical  
18 documentation to demonstrate the equivalency of the system, method, or  
19 device, as prescribed in this chapter and the rules adopted under this  
20 chapter.

21 (3) In any suit for damages allegedly caused by a failure or  
22 malfunction of the conveyance, conformity with the rules of the  
23 department is prima facie evidence that the conveyance work, operation,  
24 and inspection is reasonably safe to persons and property.

25 **Sec. 2.** RCW 70.87.010 and 2009 c 128 s 1 are each reenacted and  
26 amended to read as follows:

27 The definitions in this section apply throughout this chapter  
28 unless the context clearly requires otherwise.

29 (1) "Advisory committee" means the elevator advisory committee as  
30 described in this chapter.

31 (2) "Alteration" means any change to equipment, including its  
32 parts, components, and/or subsystems, other than maintenance, repair,  
33 or replacement.

34 (3) "Automobile parking elevator" means an elevator: (a) Located  
35 in either a stationary or horizontally moving hoistway; (b) used  
36 exclusively for parking automobiles where, during the parking process,  
37 each automobile is moved either under its own power or by means of a

1 power-driven transfer device onto and off the elevator directly into  
2 parking spaces or cubicles in line with the elevator; and (c) in which  
3 persons are not normally stationed on any level except the receiving  
4 level.

5 (4) "Belt manlift" means a power driven endless belt provided with  
6 steps or platforms and a hand hold for the transportation of personnel  
7 from floor to floor.

8 (5) "Casket lift" means a lift that (a) is installed at a mortuary,  
9 (b) is designed exclusively for carrying of caskets, (c) moves in  
10 guides in a basically vertical direction, and (d) serves two or more  
11 floors or landings.

12 (6) "Conveyance" means an elevator, escalator, dumbwaiter, belt  
13 manlift, automobile parking elevator, moving walk, and other elevating  
14 devices, as defined in this section.

15 (7) "Conveyance work" means the alteration, construction,  
16 dismantling, erection, installation, maintenance, relocation, and  
17 wiring of a conveyance.

18 (8) "Department" means the department of labor and industries.

19 (9) "Director" means the director of the department or his or her  
20 representative.

21 (10) "Dumbwaiter" means a hoisting and lowering mechanism equipped  
22 with a car (a) that moves in guides in a substantially vertical  
23 direction, (b) the floor area of which does not exceed nine square  
24 feet, (c) the inside height of which does not exceed four feet, (d) the  
25 capacity of which does not exceed five hundred pounds, and (e) that is  
26 used exclusively for carrying materials.

27 (11) "Elevator" means a hoisting or lowering machine equipped with  
28 a car or platform that moves in guides and serves two or more floors or  
29 landings of a building or structure;

30 (a) "Passenger elevator" means an elevator (i) on which passengers  
31 are permitted to ride and (ii) that may be used to carry freight or  
32 materials when the load carried does not exceed the capacity of the  
33 elevator;

34 (b) "Freight elevator" means an elevator (i) used primarily for  
35 carrying freight and (ii) on which only the operator, the persons  
36 necessary for loading and unloading, and other employees approved by  
37 the department are permitted to ride;

1 (c) "Sidewalk elevator" means a freight elevator that: (i)  
2 Operates between a sidewalk or other area outside the building and  
3 floor levels inside the building below the outside area, (ii) does not  
4 have a landing opening into the building at its upper limit of travel,  
5 and (iii) is not used to carry automobiles;

6 (d) "Hand elevator" means an elevator utilizing manual energy to  
7 move the car;

8 (e) "Inclined elevator" means an elevator that travels at an angle  
9 of inclination of seventy degrees or less from the horizontal;

10 (f) "Multideck elevator" means an elevator having two or more  
11 compartments located one immediately above the other;

12 (g) "Observation elevator" means an elevator designed to permit  
13 exterior viewing by passengers while the car is traveling;

14 (h) "Power elevator" means an elevator utilizing energy other than  
15 gravitational or manual to move the car;

16 (i) "Electric elevator" means an elevator where the energy is  
17 applied by means of an electric driving machine;

18 (j) "Hydraulic elevator" means an elevator where the energy is  
19 applied by means of a liquid under pressure in a cylinder equipped with  
20 a plunger or piston;

21 (k) "Direct-plunger hydraulic elevator" means a hydraulic elevator  
22 having a plunger or cylinder directly attached to the car frame or  
23 platform;

24 (l) "Electro-hydraulic elevator" means a direct-plunger elevator  
25 where liquid is pumped under pressure directly into the cylinder by a  
26 pump driven by an electric motor;

27 (m) "Maintained-pressure hydraulic elevator" means a direct-plunger  
28 elevator where liquid under pressure is available at all times for  
29 transfer into the cylinder;

30 (n) "Roped hydraulic elevator" means a hydraulic elevator having  
31 its plunger or piston connected to the car with wire ropes or  
32 indirectly coupled to the car by means of wire ropes and sheaves;

33 (o) "Rack and pinion elevator" means a power elevator, with or  
34 without a counterweight, that is supported, raised, and lowered by a  
35 motor or motors that drive a pinion or pinions on a stationary rack  
36 mounted in the hoistway;

37 (p) "Screw column elevator" means a power elevator having an

1 uncounterweighted car that is supported, raised, and lowered by means  
2 of a screw thread;

3 (q) "Rooftop elevator" means a power passenger or freight elevator  
4 that operates between a landing at roof level and one landing below and  
5 opens onto the exterior roof level of a building through a horizontal  
6 opening;

7 (r) "Special purpose personnel elevator" means an elevator that is  
8 limited in size, capacity, and speed, and permanently installed in  
9 structures such as grain elevators, radio antenna, bridge towers,  
10 underground facilities, dams, power plants, and similar structures to  
11 provide vertical transportation of authorized personnel and their tools  
12 and equipment only;

13 (s) "Workmen's construction elevator" means an elevator that is not  
14 part of the permanent structure of a building and is used to raise and  
15 lower workers and other persons connected with, or related to, the  
16 building project;

17 (t) "Boat launching elevator" means a conveyance that serves a boat  
18 launching structure and a beach or water surface and is used for the  
19 carrying or handling of boats in which people ride;

20 (u) "Limited-use/limited-application elevator" means a power  
21 passenger elevator where the use and application is limited by size,  
22 capacity, speed, and rise, intended principally to provide vertical  
23 transportation for people with physical disabilities.

24 (12) "Elevator contractor" means any person, firm, or company that  
25 possesses an elevator contractor license in accordance with this  
26 chapter and who is engaged in the business of performing conveyance  
27 work covered by this chapter.

28 (13) "Elevator contractor license" means a license that is issued  
29 to an elevator contractor who has met the qualification requirements  
30 established in RCW 70.87.240.

31 (14) "Elevator helper/apprentice" means a person who works under  
32 the general direction of a licensed elevator mechanic. A license is  
33 not required to be an elevator helper/apprentice.

34 (15) "Elevator mechanic" means any person who possesses an elevator  
35 mechanic license in accordance with this chapter and who is engaged in  
36 performing conveyance work covered by this chapter.

37 (16) "Elevator mechanic license" means a license that is issued to

1 a person who has met the qualification requirements established in RCW  
2 70.87.240.

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

5 (18) "Existing installations" means an installation defined as an  
6 "installation, existing" in this chapter or in rules adopted under this  
7 chapter.

8 (19) "Inspector" means an elevator inspector of the department or  
9 an elevator inspector of a municipality having in effect an elevator  
10 ordinance pursuant to RCW 70.87.200.

11 (20) "License" means a written license, duly issued by the  
12 department, authorizing a person, firm, or company to carry on the  
13 business of performing conveyance work or to perform conveyance work  
14 covered by this chapter.

15 (21) "Licensee" means the elevator mechanic or elevator contractor.

16 (22) "Maintenance" means a process of routine examination,  
17 lubrication, cleaning, servicing, and adjustment of parts, components,  
18 and/or subsystems for the purpose of ensuring performance in accordance  
19 with this chapter. "Maintenance" includes repair and replacement, but  
20 not alteration.

21 (23) "Material hoist" means a hoist that is not a part of a  
22 permanent structure used to raise or lower materials during  
23 construction, alteration, or demolition. It is not applicable to the  
24 temporary use of permanently installed personnel elevators as material  
25 hoists.

26 (24) "Material lift" means a lift that (a) is permanently  
27 installed, (b) is comprised of a car or platform that moves in guides,  
28 (c) serves two or more floors or landings, (d) travels in a vertical or  
29 inclined position, (e) is an isolated, self-contained lift, (f) is not  
30 part of a conveying system, and (g) is installed in a commercial or  
31 industrial area not accessible to the general public or intended to be  
32 operated by the general public.

33 (25) "Moving walk" means a passenger carrying device (a) on which  
34 passengers stand or walk and (b) on which the passenger carrying  
35 surface remains parallel to its direction of motion.

36 (26) "One-man capacity manlift" means a single passenger, hand-  
37 powered counterweighted device, or electric-powered device, that  
38 travels vertically in guides and serves two or more landings.

1 (27) "Owner" means any person having title to or control of a  
2 conveyance, as guardian, trustee, lessee, or otherwise.

3 (28) "Permit" means a permit issued by the department: (a) To  
4 perform conveyance work, other than maintenance; or (b) to operate a  
5 conveyance.

6 (29) "Person" means this state, a political subdivision, any public  
7 or private corporation, any firm, or any other entity as well as an  
8 individual.

9 (30) "Personnel hoist" means a hoist that is not a part of a  
10 permanent structure, is installed inside or outside buildings during  
11 construction, alteration, or demolition, and used to raise or lower  
12 workers and other persons connected with, or related to, the building  
13 project. The hoist may also be used for transportation of materials.

14 (31) "Platform" means a rigid surface that is maintained in a  
15 horizontal position at all times when in use, and upon which passengers  
16 stand or a load is carried.

17 (32) "Private residence conveyance" means a conveyance installed in  
18 or on the premises of a single-family dwelling and operated for  
19 transporting persons or property from one elevation to another.

20 (33) "Public agency" means a county, incorporated city or town,  
21 municipal corporation, state agency, institution of higher education,  
22 political subdivision, or other public agency and includes any  
23 department, bureau, office, board, commission or institution of such  
24 public entities.

25 (34) "Repair" means the reconditioning or renewal of parts,  
26 components, and/or subsystems necessary to keep equipment in compliance  
27 with this chapter.

28 (35) "Replacement" means the substitution of a device, component,  
29 and/or subsystem in its entirety with a unit that is basically the same  
30 as the original for the purpose of ensuring performance in accordance  
31 with this chapter.

32 (36) "Single-occupancy farm conveyance" means a hand-powered  
33 counterweighted single-occupancy conveyance that travels vertically in  
34 a grain elevator and is located on a farm that does not accept  
35 commercial grain.

36 (37) "Stairway chair lift" means a lift that travels in a basically  
37 inclined direction and is designed for use by individuals with  
38 disabilities.

1 (38) "Wheelchair lift" means a lift that travels in a vertical or  
2 inclined direction and is designed for use by individuals with  
3 disabilities.

4 (39) "Employee" means any person employed by an elevator  
5 contractor.

6 (40) "Whistleblower" means any employee who in good faith reports  
7 practices or opposes practices that may violate the provisions of this  
8 chapter or the rules promulgated hereunder, or of the safety,  
9 installation, repair, or maintenance policies of his or her employer.  
10 The term also means (a) an employee who is believed to have reported  
11 such practices but who, in fact, has not reported such practices or (b)  
12 an employee who has assisted in the reporting of practices or has  
13 provided testimony or information in connection with the reporting of  
14 practices.

15 (41) "Workplace reprisal or retaliatory action" includes actions  
16 such as discharge or in any manner discrimination against any employee  
17 who has reported or filed any complaint or instituted or caused to be  
18 instituted any proceeding under or related to this chapter, or has  
19 testified or is about to testify in any such proceeding or because of  
20 the exercise by such employee on behalf of himself or herself or others  
21 of any right or responsibility afforded by this chapter.

22 NEW SECTION. Sec. 3. A new section is added to chapter 70.87 RCW  
23 to read as follows:

24 (1) An employee who is a whistleblower and who as a result of being  
25 a whistleblower has been subjected to workplace reprisal or retaliatory  
26 action has the remedies provided under chapter 49.60 RCW.

27 (2) The identity of a whistleblower who reports, in good faith, to  
28 the department or to a political subdivision that regulates  
29 conveyances, practices that may violate the provisions of this chapter  
30 or the rules promulgated hereunder must remain confidential. The  
31 provisions of RCW 4.24.500 through 4.24.520, providing certain  
32 protections to persons who communicate to government agencies, apply to  
33 such reports.

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