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HOUSE BILL 37

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Harry Garcia and Jane E. Powdrell-Culbert
and Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO PROFESSIONAL STANDARDS; ENACTING THE ELEVATOR SAFETY ACT; PROVIDING FOR LICENSURE OF ELEVATOR 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. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Elevator Safety Act".

SECTION 2. [NEW MATERIAL] 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 chairlifts 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 their 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 qualification of elevator inspectors, the
6 safety standard for platform lifts and stairway chairlifts and
7 the standard for elevator suspension, compensation and governor
8 systems. The latest editions of each of the standards shall be
9 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. [NEW MATERIAL] EXEMPTIONS.--**The following are
17 exempted from 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. [NEW MATERIAL] 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 standard for
- 24 elevators and escalators;
- 25 (4) a safety standard for platform lifts and

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1 stairway chairlifts;

2 (5) a standard for the qualification of
3 elevator inspectors developed by the American society of civil
4 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 be
11 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. [NEW MATERIAL] ELEVATOR MECHANICS, CONTRACTORS
22 AND 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 residences, unless the
16 person is certified as an inspector pursuant to the Elevator
17 Safety Act.

18 SECTION 6. [NEW MATERIAL] ELEVATOR MECHANIC'S AND
19 ELEVATOR CONTRACTOR'S LICENSES AND INSPECTOR'S CERTIFICATES.--

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 or certificate with the construction
24 industries division of the regulation and licensing department
25 on established forms from the division.

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B. Applications shall contain:

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

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

(3) 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;

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

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

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

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

(8) any record of criminal convictions, as 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 or certificate shall be granted to a
4 person who has not fulfilled the requirements of this section.

5 D. Elevator 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 apprenticeship
9 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 for the qualifications of
16 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. [NEW MATERIAL] ISSUANCE AND RENEWAL OF
22 LICENSES AND CERTIFICATES--FEES--CONTINUING EDUCATION.--

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

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1 B. The renewal of a license or certificate shall be
2 conditioned upon the submission of a certificate of completion
3 of a course designed to ensure the continuing education of
4 licensees or certificate holders on new and existing provisions
5 of the rules of the commission, including not less than eight
6 hours of instruction completed within one year immediately
7 preceding the date of license or certificate 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 an instructor may be
12 exempt from the requirements for license or certificate renewal
13 if the 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 or certificate holders
18 and shall follow a format approved by the director. The
19 records shall be available for inspection by the director.
20 Training providers shall be responsible for the security of all
21 attendance records and certificates of completion. Falsifying
22 or knowingly allowing another to falsify attendance records or
23 certificates of completion constitutes grounds for suspension
24 or revocation of the training provider's approval.

25 **SECTION 8. [NEW MATERIAL] EMERGENCY AND TEMPORARY**

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1 LICENSES.--

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

21 B. A contractor shall notify the director when
22 there are no licensed personnel available to perform elevator
23 work. The contractor may request that the director issue
24 temporary elevator mechanic's licenses to persons certified by
25 the contractor to have an acceptable combination of documented

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

12 SECTION 9. [NEW MATERIAL] TEMPORARILY DORMANT

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

22 SECTION 10. [NEW MATERIAL] REGISTRATION OF EXISTING

23 CONVEYANCES.--By January 1, 2019, the owner or lessee of every
24 existing conveyance shall register with the director each
25 conveyance owned and operated by the owner or lessee and

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1 provide the type of conveyance, its rated load and speed, the
2 name of the manufacturer, its location, the purpose for which
3 it is used and any additional information that the director
4 requires. After July 1, 2018, all conveyances shall be
5 registered at the time they are completed and placed in
6 service.

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

13 SECTION 12. [NEW MATERIAL] PERMITS.--

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

22 B. A permit fee to be deposited into the elevator
23 safety fund shall be set by the director and shall not be
24 refundable.

25 C. Each application for a permit shall be

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1 accompanied by copies of specifications and accurately scaled
2 and fully dimensioned plans and shall include:

3 (1) the location of the installation in
4 relation to the plans and elevation of the building;

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

7 (3) all structural supporting members,
8 including foundations; and

9 (4) all materials to be employed and all loads
10 to be supported or conveyed.

11 D. Permits may be revoked for:

12 (1) false statements or misrepresentations as
13 to the material facts in the application, plans or
14 specifications on which the permit was based;

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

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

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

23 E. The term of the permit shall expire no later
24 than six months after the date of issuance of the permit or if
25 the work is suspended or abandoned for a period of sixty days.

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1 The director may provide a six-month extension of the term of
2 the permit.

3 SECTION 13. [NEW MATERIAL] ELEVATOR SAFETY FUND--

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

16 SECTION 14. [NEW MATERIAL] CERTIFICATES OF OPERATION--

17 ANNUAL INSPECTIONS--REGISTRATIONS--WAIVER FOR PRIVATE
18 RESIDENCES.--

19 A. All new conveyance installations shall be
20 performed by a contractor licensed pursuant to the Elevator
21 Safety Act. Subsequent to installation, a contractor shall
22 certify compliance with the Elevator Safety Act. Prior to any
23 conveyance being used, a property owner or lessee must obtain a
24 certificate of operation from the director with a fee set by
25 the director. The contractor shall complete the certificate of

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1 operation for new installations. The certificate of operation
2 and the fee for newly installed platform lifts and stairway
3 chairlifts for residences shall be subsequent to an inspection
4 by an inspector, who may be a third-party inspector.

5 B. The director or the director's designee shall
6 inspect all newly installed and existing platform lifts and
7 stairway chairlifts for residences subsequent to an inspection
8 by a private inspector. The director shall provide notice to
9 the owner of the residence where the conveyance is located with
10 relevant information about conveyance safety requirements,
11 including the requirement that the owner contact the director
12 in order to ensure that the conveyance is periodically
13 inspected and made safe before the permit for the conveyance
14 expires. The inspection shall only be done at the request and
15 consent of a private residence owner.

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

22 SECTION 15. [NEW MATERIAL] INSURANCE REQUIRED.--

23 A. Contractors shall submit to the director an
24 insurance policy or a certified copy of an insurance policy
25 issued by an insurance company to provide general liability

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

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

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

20 SECTION 16. [NEW MATERIAL] ENFORCEMENT.--

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

25 B. Subsequent to inspection, the inspector shall

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1 supply a property owner or lessee and the director with a
2 written inspection report describing all code violations, if
3 any. The director shall ensure code compliance.

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

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

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

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

21 G. If the director determines that there are
22 reasonable grounds to believe that a violation or danger
23 exists, the director shall cause to be made an investigation
24 and inspection pursuant to the Elevator Safety Act as soon as
25 practicable to determine if a violation or danger exists. If

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1 the director determines that there are no reasonable grounds to
2 believe that a violation or danger exists, the director shall
3 notify concerned parties in writing of the determination.

4 H. After July 1, 2018 and upon the inspection of
5 any conveyance, if the equipment is found to be in dangerous
6 condition, if there is an immediate hazard to those riding or
7 using the conveyance or if the design or the method of
8 operation in combination with devices used is considered
9 inherently dangerous, in the opinion of the director, the
10 director shall notify the owner of the condition and shall
11 order alterations or additions that are deemed necessary to
12 eliminate the dangerous condition.

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

20 SECTION 18. [NEW MATERIAL] CIVIL PENALTIES--SUSPENSION OR
21 REVOCATION OF LICENSES OR CERTIFICATES.--

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

25 (1) a false statement was made as to a

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1 material matter in the application;

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

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

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

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

23 D. An owner or lessee of a conveyance who is found
24 to be in violation of a provision of the Elevator Safety Act
25 shall be fined in an amount not to exceed one thousand five

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1 hundred dollars (\$1,500) or be imprisoned for a period not
2 exceeding thirty days, or both.

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

7 SECTION 20. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2018.

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