

HOUSE BILL REPORT

SSB 5412

As Reported by House Committee On:
Labor & Workforce Development

Title: An act relating to whistleblowing in the conveyance workplace.

Brief Description: Providing remedies for whistleblowers in the conveyance work industry.

Sponsors: Senate Committee on Labor, Commerce & Consumer Protection (originally sponsored by Senators Keiser, Kohl-Welles, Kline, Roach, Conway, Hobbs and Chase).

Brief History:

Committee Activity:

Labor & Workforce Development: 2/17/12, 2/21/12 [DPA].

**Brief Summary of Substitute Bill
(As Amended by Committee)**

- Provides a remedy for workplace reprisal or retaliatory action for whistleblowers employed by elevator contractors.

HOUSE COMMITTEE ON LABOR & WORKFORCE DEVELOPMENT

Majority Report: Do pass as amended. Signed by 8 members: Representatives Sells, Chair; Reykdal, Vice Chair; Green, Kenney, Miloscia, Moeller, Ormsby and Roberts.

Minority Report: Do not pass. Signed by 4 members: Representatives Condotta, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Taylor and Warnick.

Staff: Oliver Stiefel (786-5793) and Joan Elgee (786-7106).

Background:

Elevator Regulation.

A conveyance is an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, moving walk, or other elevating device. The Department of Labor and Industries (Department) administers and enforces state laws providing for the safe operation,

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installation, inspection, and repair of conveyances. In general, these laws require owners to obtain permits from the Department before conveyances are built, installed, moved, or altered. These activities must be performed by licensed elevator contractors employing a licensed elevator mechanic. In addition, all conveyances must have operating permits and are subject to annual safety inspections by the Department. Intent language states that the use of unsafe and defective conveyances creates a substantial probability of serious and preventable injury to employees who use or work with conveyances, as well as to the public who may be exposed to unsafe conditions.

Employees who work on or with conveyances must be familiar with their operation and safety functions. Familiarity must be documented by training or experience that includes recognizing safety hazards and performing procedures in compliance with laws and regulations relating to conveyances.

Whistleblower Protection.

Protection for whistleblowers is available in some circumstances under current law. For example, an employee who reports alleged improper governmental action, and who is subject to workplace reprisal or retaliatory action, may have the remedies for unfair practice under the Washington Law Against Discrimination (WLAD). Under the WLAD, the Human Rights Commission (Commission) has the authority to investigate unfair practice complaints. If the Commission finds the complaint meritorious, and cannot reach an agreement to end the unfair practice, the Commission must bring the matter before an administrative law judge. If the judge finds the existence of an unfair practice, he or she may, in addition to other remedies, require restoration of benefits and back pay.

Summary of Amended Bill:

The legislative purpose of the conveyance statute is amended to state that employees should be protected from workplace retaliatory action for the opposition to, or reporting in good faith, of practices that may violate state laws and rules or employer policies governing conveyances.

An employee is any person employed by an elevator contractor. A whistleblower is any employee who reports in good faith, or opposes practices of his or her employer, that may violate state laws and rules or employer policies governing conveyances. A whistleblower is also an employee believed to have, but has not in fact, reported improper practices, or an employee who has assisted in the reporting of or proceedings regarding such practices.

Workplace reprisal or retaliatory action includes actions such as the discharge of or discrimination against an employee who has reported, filed a complaint, or testified on the unsafe design, operation, and inspection of conveyances.

It is an unfair practice under the WLAD for an elevator contractor to subject a whistleblower to workplace reprisal or retaliatory action as a result of the employee being a whistleblower. The identity of a whistleblower must remain confidential. A whistleblower who

communicates to an appropriate governmental agency in good faith is immune from civil liability based upon the communication to the agency.

Amended Bill Compared to Substitute Bill:

Language stating that an employee who is a whistleblower who has been subjected to workplace reprisal or retaliatory action has remedies provided under the WLAD is replaced with language specifying that subjecting a whistleblower to reprisal or retaliatory action, as a result of the employee being a whistleblower, is an unfair practice under the WLAD.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill addresses a critical public safety issue and recent cases involving serious injury or death illustrate the need for this legislation. In 2009 Washington had 39 recorded elevator and escalator malfunction-related accidents. That number climbed to 53 in 2010, and increased to 89 last year. The industry has changed over the last decade; violations of maintenance schedules are occurring too often. Maintenance routes for mechanics are much larger and monthly visits have been replaced with quarterly, and in some cases semi-annual, visits. The workforce has decreased greatly, yet more accidents are occurring. Most accidents do not involve misuse by the public; they are due to mechanical failure, and the accidents that happen tend to be severe. Installers and mechanics are caught between reporting safety violations and companies trying to maximize profits; threats of retaliation against individuals who think safety is being compromised are increasing. There needs to be a mechanism in place for reporting safety violations without fear of losing one's job.

(Opposed) None.

Persons Testifying: Tamara Jones, Department of Labor and Industries; and Swen Larson, International Union of Elevator Constructors.

Persons Signed In To Testify But Not Testifying: None.