

A Bill for an Act Relating to the Safety of Boilers, Elevators and Amusement Rides.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

**“CHAPTER
 BOILER AND ELEVATOR SAFETY LAW**

Sec. -1 Short title. This chapter shall be known as the Boiler and Elevator Safety Law.

Sec. -2 Findings and purpose. The legislature finds that the Hawaii occupational safety and health law does not adequately provide for the safe operation and use of boilers, pressure systems, amusement rides, and elevators and kindred equipment. The purpose of this law is to assure the safe operation and use of such apparatus in Hawaii.

Sec. -3 Definitions.

“Appeals board” means the department of labor and industrial relations appeals board.

“Boiler” means a closed vessel in which water is heated, steam is generated, steam is superheated or any combination thereof by the direct application of heat. The term “boiler” includes fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and complete within themselves.

“Contractor” means any person, firm or corporation installing, repairing or servicing and responsible for the safe operation of any boiler, pressure system, amusement ride, and elevator and kindred equipment or structure inspected pursuant to this chapter.

“Department” means the department of labor and industrial relations.

“Director” means the director of labor and industrial relations.

“Division” means the division of occupational safety and health.

“Elevator” means a hoisting and lowering mechanism permanently installed in a structure, designed to carry passengers or authorized personnel, equipped with a car or platform which moves in fixed guides and serves two or more fixed landings.

“Elevators and kindred equipment” as used in this chapter means elevators, escalators, dumbwaiters, moving walks, stage lifts, mechanized parking elevators, manlifts, inclined lifts, personnel hoists, aerial tramways, permanently installed material lifts, personal automatic trains and any other similar mechanized equipment used to convey people in places other than a public right-of-way.

“National Board” means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

“Owner” means any person, firm or corporation with legal title to any boiler, pressure system, amusement ride, and elevator and kindred equipment inspected pursuant to this chapter who may or may not be the user.

“Pressure piping” means piping systems specified in the American National Standard Code for Pressure Piping developed and promulgated by the American Society of Mechanical Engineers.

“Pressure systems” means both pressure vessels and pressure piping as defined in this section.

“Pressure vessel” means a closed vessel in which pressure is obtained from an external source or by the direct application of heat from a direct or indirect source.

“User” means any person, firm or corporation legally in possession and responsible for the safe operation of any boiler, pressure system, amusement ride, and elevator and kindred equipment inspected pursuant to this chapter.

“Vendor” means any person, firm or corporation that sells or distributes any boiler, pressure system, amusement ride, and elevator and kindred equipment required to be inspected pursuant to this chapter.

Sec. -4 Powers and duties. (a) Administration.

- (1) The department of labor and industrial relations shall establish a boiler and elevator inspection bureau for the enforcement of the rules and regulations promulgated by the authority of this chapter and such other duties as assigned.
- (2) The department shall:
 - (A) Implement and enforce the requirements of this chapter.
 - (B) Keep adequate and complete records of the type, size, location, identification data and inspection findings for boilers, pressure systems, amusement rides, and elevators and kindred equipment required to be inspected pursuant to this chapter.
- (3) The department shall formulate definitions and adopt and enforce standards, rules and regulations pursuant to chapter 91 as may be necessary for carrying out the purposes and provisions of this chapter. Definitions, rules and regulations adopted in accordance with chapter 91 under the authority of chapter 396, prior to the adoption of this chapter that pertain to boilers, pressure systems, amusement rides, and elevators and kindred equipment required to be inspected pursuant to this chapter, shall be continued in force under the authority of this chapter.
- (4) Emergency temporary standards may be promulgated without conforming to chapter 91 and without hearings to take immediate effect upon publication of a notice of such emergency temporary standards in a newspaper of general circulation in the State or upon such other date as may be specified in the notice. An emergency temporary standard may be adopted, if the director determines:
 - (A) That the public or individuals are exposed to grave danger from exposure to hazardous conditions or circumstances; and
 - (B) That such emergency standard is necessary to protect the public or individuals from such danger.
 Emergency temporary standards shall be effective until superseded by a standard promulgated in accordance with the procedures set forth in chapter 91, but in any case shall be effective no longer than six months.
- (5) Variances from standards promulgated under this chapter may be granted

upon application of an owner, user, contractor, or vendor. Application for variances must correspond to procedures set forth in the rules and regulations adopted pursuant to this chapter. The director may issue an order for variance, if he determines that the proponent of the variance has demonstrated that the conditions, practices, means, methods, operations, or processes used or proposed to be used will provide substantially equivalent safety as that provided by the standards.

- (6) Permits.
 - (A) The department shall not issue a "permit to operate" regarding any boiler, pressure system, or elevator and kindred equipment unless they are found to be safe by a qualified inspector.
 - (B) The department may immediately revoke any "permit to operate" any boiler, pressure system, or elevator and kindred equipment found to be in an unsafe condition or where a user, owner or contractor ignores prior department orders to correct specific defects or hazards and continues to use or operate the abovementioned apparatus without abating the hazards or defects.
 - (C) The department shall reissue a "permit to operate" to any user, owner or contractor who demonstrates that he is proceeding in good faith to abate all nonconforming conditions mentioned in department orders and the boilers, pressure systems, and elevators and kindred equipment are safe to operate.
 - (D) The department shall establish criteria for the periodic reinspection and renewal of the permits to operate, and may provide for the issuance of temporary permits to operate while any non-complying boiler, pressure system, and elevator and kindred equipment are being brought into full compliance with the applicable standards and regulations promulgated pursuant to this chapter.
- (7) Certificates of inspection shall be issued for amusement rides after each inspection, if the rides are found to be safe for use.
- (8) No boiler, pressure system, amusement ride, or elevator and kindred equipment which are required to be inspected by this chapter or by any rule or regulation promulgated pursuant to this chapter shall be operated, except as necessary to install, repair, or test, unless a permit to operate or certificate of inspection has been authorized or issued by this department and remains valid.
- (9) The department may, upon the application of any owner or user or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order. Any person affected by an order may for cause petition the department for an extension of time.
- (b) Inspection and investigation.
 - (1) Authorized representatives of the director shall have the right to enter without delay during regular working hours and at other reasonable times any place, establishment or premises in which are located boilers, pressure systems, amusement rides, and elevators and kindred equipment requiring inspection pursuant to this chapter.

- (2) The department shall inspect for the purpose of insuring compliance with the purposes and provisions of this chapter any activity related to the erection, construction, alteration, demolition or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and other construction projects or facilities.
 - (3) The department shall review plans and make inspections, and investigations of boilers, and pressure systems, and the premises appurtenant to each at times and at intervals determined by the director for the purpose of insuring compliance with the purpose and provisions of this chapter. This section shall not apply to single family dwellings or multiple dwelling units of less than 6 living units.
 - (4) The department shall review plans and make inspections, and investigations of elevators and kindred equipment and the premises appurtenant to each at times and at intervals determined by the director for the purpose of insuring compliance with the purposes and provisions of this chapter. This section shall not apply to single family dwelling.
 - (5) The department shall inspect, at least semi-annually all mechanically or electrically operated devices considered as major rides and used as amusement rides at a carnival, circus, fair, or amusement park for the purpose of protecting the safety of the general public. This section shall not apply to any coin operated ride or mechanically or electrically operated devices considered or known in the amusement trade as kiddie rides.
 - (6) The department may investigate accidents involving boilers, pressure systems, amusement rides, and elevators and kindred equipment inspected under this chapter and may issue orders and recommendations with respect to the elimination and control of the cause factors.
 - (7) The department shall have the right to question any employer, owner, operator, agent or employee in investigation, enforcement, and inspection activities covered by this chapter.
 - (8) Any employee of the State acting within the scope of his office, employment, or authority under this chapter shall not be liable in or made a party to any civil action growing out of the administration and enforcement of this chapter.
- (c) Education and training.
- (1) The department may disseminate through exhibitions, pictures, lectures, pamphlets, letters, notices, and any other method of publicity, to owners, users, vendors, architects, contractors, employees, and the general public information regarding boilers, pressure systems, amusement rides, and elevators and kindred equipment required to be inspected pursuant to this chapter.
 - (2) Where appropriate, the department may undertake programs in training and consultation with owners, users, property management firms, vendors, architects, contractors, employees, and the general public regarding the safety requirements of this chapter and the rules and regulations.
- (d) Enforcement.

- (1) Whenever right of entry to a place to inspect any boiler, pressure system, amusement ride, or elevator and kindred equipment required by this chapter to be inspected is refused to an authorized representative of the director, the department may apply to the circuit court where such place exists for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court.
- (2) Whenever the department finds that the construction of or the operation of any boiler, pressure system, amusement ride, or elevator and kindred equipment required to be inspected by this chapter is not safe, or that any practice, means, method, operation or process employed or used is unsafe or is not in conformance with the rules and regulations promulgated pursuant to this chapter, the department shall issue an order to render the construction or operation safe or in conformance with this chapter or rules and regulations and deliver the same to the contractor, owner, or user. Each order shall be in writing and may be delivered by mail or in person. The department may in the order direct that, in the manner and within a time specified such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided and used as are reasonably required to insure compliance with the purposes and provisions of this chapter. The owner, or user, or contractor shall obey and observe all orders issued by the department or be subject to appropriate civil penalties.
- (3) Whenever in the opinion of the department the condition of, or the operation of boilers, pressure systems, amusement rides, or elevators and kindred equipment required to be inspected by this chapter, or any practice, means, method, operation, or process employed or used, is unsafe, or is not properly guarded or is dangerously placed, the use thereof may be prohibited by the department, an order to that effect shall be posted prominently on the equipment, or near the place or condition referred to in the order. The order shall be removed when a determination has been made by an authorized representative of the department that the boilers, pressure systems, amusement rides, or elevators and kindred equipment are safe and the required safeguards or safety devices are provided.
- (4) When in the opinion of the department the operation of boilers, pressure systems, amusement rides, or elevators and kindred equipment, required to be inspected by this chapter or any practice, means, method, operation or process employed or used constitutes an imminent hazard to the life or safety of any person, or to property, the department may apply to the circuit court of the circuit in which such boilers, pressure systems, amusement rides, or elevators and kindred equipment are situated or such practice, means, method, operation or process is employed for an injunction restraining the use or operation until the use or operation is made safe. The application to the circuit court accompanied by an affidavit showing that the use or operation exists in violation of a standard, rule, regulation, variance, or order of the department and constitutes an imminent hazard to the life or safety of any person or to property and accompanied by a copy of the standard, rule, regulation, variance, or applicable order, shall warrant,

in the discretion of the court, the immediate granting of a temporary restraining order. No bond shall be required from the department as a prerequisite to the granting of a restraining order.

- (5) The director and his authorized representative shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of documentary evidence, and examining or causing to be examined witnesses as are possessed by the court and may take depositions and certify to official acts. The circuit court of any circuit upon application by the director shall have the power to enforce by proper proceedings the attendance and testimony of any witness so subpoenaed. Subpoena and witness fees and mileage in such cases shall be the same as in criminal cases in the circuit courts. Necessary expenses of, or in connection with, such hearings or investigations shall be payable from the funds appropriated for expenses of administration of the department. No person shall be excused from attending or testifying or producing materials, books, papers, correspondences, memoranda, and other records before the director or in obedience to subpoena on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary, or otherwise, except that such individuals so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.
- (6) Where a condition or practice involving any boiler, pressure system, amusement ride, or elevator and kindred equipment required to be inspected by this chapter could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:
 - (A) Immediately take steps to obtain abatement by informing the owners, users, contractors, and all persons in harms way of such hazard by meeting, posted notice, or otherwise;
 - (B) Take steps to immediately obtain abatement through direct control or elimination of the hazard if after reasonable search, the user, owner or contractor or their representative is not available; and
 - (C) Take steps to obtain immediate abatement when the nature and imminency of the danger or hazard does not permit a search for the owner, user, or contractor; and
 - (D) Where appropriate, initiate necessary legal proceedings to require abatement by the owner, user or contractor.
- (7) The department may prosecute, defend and maintain actions in the name of the department for the enforcement of the provisions of this chapter, including the enforcement of any order issued by it, the appeal of any administrative or court decision, and other actions necessary to enforce this chapter.

Sec. -5 Fees. (a) The director may prescribe reasonable fees to be charged

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for inspection, examination, other services rendered and for permits, certificates, or licenses, the issuance of which are required by this chapter or by any rule or regulation of the department promulgated pursuant to this chapter, and for:

- (1) Inspection by department of any boiler, pressure system, amusement ride, and elevator and kindred equipment for which a permit or certificate is required for its installation, operation or use and which is required to be inspected by this chapter or by any rule or regulation of the department; and
 - (2) Examination of any person applying for permits, certificates or licenses as required by this chapter or by any rule or regulation of the department.
- (b) All fees received by the department pursuant to this section shall be paid into the general fund of the State.

Sec. -6 Safety inspection by qualified inspectors. (a) All safety inspections required under this chapter of boilers and pressure systems shall be performed by deputy boiler inspectors in the employ of the department who are qualified boiler inspectors and, when authorized by the director, may be performed by special inspectors who are qualified boiler inspectors in the employ of insurance companies insuring boilers or pressure systems in this State.

(b) A qualified boiler inspector is a person eligible for or in possession of a valid commission issued by the National Board of Boiler and Pressure Vessel Inspectors and who has received from the director or his authorized agent briefings and instructions regarding the rules and regulations pertaining to boilers and pressure systems in this State.

(c) All safety inspections required under this chapter of elevators and kindred equipment shall be performed by deputy elevator inspectors of the department who are qualified elevator inspectors and who are employed primarily for purposes of elevator and related inspection work.

(d) A qualified elevator inspector is a person who has worked at least five years as an elevator mechanic or who has satisfied requirements established by the department of labor and industrial relations; provided that these experience requirements shall not apply to any person who was serving as an elevator inspector or a supervisor elevator inspector for the department of labor and industrial relations on May 22, 1974.

Sec. -7 Complaints to the department. (a) Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(b) Names of all complainants and witnesses shall be held in confidence by the department unless prior permission has been given by the complainant or witness to release his name or unless it has been determined by the attorney general that disclosure is necessary for enforcement and review of this chapter.

Sec. -8 Violations and penalties. (a) The director shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation, the good faith of the owner, user, contractor, or vendor and the history of previous violations.

(b) Any owner, user, contractor, or vendor who violates this chapter, or any safety standard promulgated hereunder or any rule or regulation issued under the

authority of this chapter, or who violates or fails to comply with any order made under or by virtue of this chapter or under or by virtue of any rule or regulation of the department, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguard, notice, order, or warning required by this chapter or by any rule or regulation of the department shall be assessed a civil penalty of not more than \$1,000 for each such violation.

(c) Each day a violation continues shall constitute a separate violation except during an abatement period.

(d) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter, shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(e) Civil penalties owed under this chapter shall be paid to the department and may be recovered in a civil action in the name of the department and the State brought in the district or circuit court for the circuit where the violation is alleged to have occurred or where the owner, user, contractor or vendor has his principal office.

(f) Criminal offenses committed against any employee of the State acting within the scope of his office, or employment, or authority under this chapter shall be subject to the penalties set forth in the Hawaii Penal Code provided that:

- (1) Ten years shall be added to the maximum term of imprisonment (unless life imprisonment is imposed) and \$10,000 shall be added to the maximum fine imposed for conviction under a Class A felony.
- (2) Five years shall be added to the maximum term of imprisonment and \$5,000 shall be added to the maximum fine imposed for conviction under a Class B felony.
- (3) Three years shall be added to the maximum term of imprisonment and \$1,000 shall be added to the maximum fine for conviction under a Class C felony.
- (4) One year shall be added to the maximum term of imprisonment and \$500 shall be added to the maximum fine for conviction for a misdemeanor.
- (5) The maximum term of imprisonment and maximum fines prescribed for misdemeanors under the Hawaii Penal Code shall apply to convictions for a petty misdemeanor.

Sec. -9 Review and appeal. Any order of the director shall be final and conclusive against the owner, user, vendor, or contractor unless the owner, user, vendor, or contractor files with the director a written notice of contest of the order, the abatement period stated in the order, or the penalty stated in the order within twenty days after receipt of such order.

The owner, user, vendor, or contractor may petition the director for modification of the abatement requirements in an order. The owner, user, vendor, or contractor shall file said petition no later than the close of the next business day following the date on which abatement is required or under exceptional circumstances and for good cause shown at a later date. The petition for modification may be filed after the twenty-day period for contesting the order has expired where the initial abatement period stated in the order expires after the twenty-day period for filing a notice of contest has run.

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The director shall issue an order either affirming or modifying the abatement requirement. The director may issue an order modifying the abatement requirement upon a showing by the owner, user, vendor, or contractor of a good faith effort to comply with the abatement requirements of an order and that abatement has not been completed because of factors beyond his reasonable control.

The director shall advise the appeals board of a notice of contest upon receiving any such notice.

The appeals board shall afford an opportunity for a hearing on any notice of contest. Such hearings before the appeals board shall be de novo except where rules and regulations require a prior formal hearing at the department level, the proceedings of which are required to be transcribed, in which case review before the appeals board shall be confined to the record only.

The appeals board may affirm, modify, or vacate the order or continue the matter upon such terms and conditions as may be deemed necessary, or remand the case to the director with instructions for further proceedings or direct such other relief as may be appropriate.

Sec. -10 Judicial review. Except where an order has already become final for failure to contest, the decision and order of the appeals board shall be final and conclusive, unless the director or any party to the proceedings before the appeals board obtains a review thereof in the manner provided in chapter 91 by instituting proceedings in the circuit court of the circuit in which the boiler, pressure system, amusement ride, or elevator and kindred equipment is situated or such practice, means, method, operation, or process is employed. The hearing on review shall be on the record and the department shall be deemed a party to any such proceedings. The court shall give precedence to such proceedings over all other civil cases.

Sec. -11 Trade secrets. Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director concerned with carrying out this chapter or when relevant in any proceeding under this chapter. In such proceeding the director, the appeals board, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

Sec. -12 Evidence. No record or determination of any administrative proceeding under this chapter or any statement or report of any kind obtained or received in connection with the administration or enforcement of this chapter shall be admitted or used whether as evidence, or as discovery, in any civil action growing out of any matter mentioned in the record, determination, statement or report other than an action for enforcement or review under this chapter."

SECTION 2. Section 396-4(b) Hawaii Revised Statutes, is amended to read as follows:

"(b) Inspection and investigation.

- (1) Authorized representatives of the director shall have the right to enter without delay any place of employment during regular working hours and at other reasonable times;
- (2) The department shall inspect places of employment and machines, devices, apparatus, and equipment for the purpose of insuring adequate protection to

- the life, safety and health of workers;
- (3) The department shall inspect construction activities for the purpose of protecting the health and safety of employees and the general public. A construction activity includes any activity related to the erection, construction, alteration, demolition or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and any other construction project or facility;
 - (4) The department may investigate the cause of all industrial injuries resulting in disability or death which occur in any employment, or place of employment, and may make reasonable orders and recommendations with respect to the cause of the injuries;
 - (5) The department shall have the right to question privately any employer, owners, operator, agent or employee in investigation, enforcement and inspection activities;
 - (6) There shall be a prohibition against advance notice of inspection except that written exception may be expressly authorized by the director in his discretion and pursuant to the rules and regulations promulgated under this chapter. Those inspections requiring advance notice for preparation or for other purposes of inspection as further defined in the rules and regulations promulgated under this chapter shall not be included in the prohibition against advance notice.
 - (7) An employee of the State acting within the scope of his office, employment, or authority under this chapter shall not be liable in or made a party to any civil action growing out of the administration or enforcement of this chapter."

SECTION 3. Section 396-5, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 396-5.5, Hawaii Revised Statutes, is repealed.

SECTION 5. **Transfer of functions.** All rights, powers, functions, and duties of the technical inspection and compliance branch of the division of occupational safety and health of the department of labor and industrial relations are transferred to the boiler and elevator inspection bureau of the department of labor and industrial relations.

SECTION 6. **Transfer of personnel.** All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having civil service status shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act; provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

SECTION 7. **Transfer of records and equipment.** All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the technical inspection and compliance branch of the division of occupational safety and

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health of the department of labor and industrial relations relating to the functions transferred to the boiler and elevator inspection bureau of the department of labor and industrial relations shall be transferred with the functions to which they relate.

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 9. **Effective date.** This Act shall take effect upon its approval.

(Approved April 12, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.