

ACT 186

S.B. NO. 2803

A Bill for an Act Relating to Boiler and Elevator Safety Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 397-3, Hawaii Revised Statutes, is amended to read as follows:

~~[[[§397-3]]]~~ Definitions. As used in this chapter:

“Appeals board” means the ~~[department of]~~ labor and industrial relations appeals board~~[-]~~ established by section 371-4.

“Boiler” means a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam or vapor is superheated, or any combination thereof under pressure for use external to itself, 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.]~~ energy from the combustion of fuels, or from electricity or solar energy.

“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]~~ or 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]~~ or 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~~[-]~~ Power Piping Code B31.1.

"Pressure ~~[systems"]~~ system" means ~~[both]~~ either a pressure ~~[vessels and]~~ vessel or 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]~~ or 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]~~ or elevator and kindred equipment required to be inspected pursuant to this chapter."

SECTION 2. Section 397-4, Hawaii Revised Statutes, is amended to read as follows:

"§397-4 Powers and duties. (a) Administration.

- (1) The department shall establish a boiler and elevator inspection branch for the enforcement of the rules adopted under this chapter and other duties as assigned;
- (2) The department shall:
 - (A) Implement and enforce the requirements of this chapter; and
 - (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 and rules pursuant to chapter 91 that may be necessary for carrying out this chapter~~[-]. Definitions and rules 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 adopted without conforming to chapter 91 and without hearings to take immediate effect upon giving public notice of the emergency temporary standards or upon another date that 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 the emergency temporary standard is necessary to protect the public or individuals from danger.
Emergency temporary standards shall be effective until superseded by a standard adopted under chapter 91, but ~~[in any case]~~ shall not be effective ~~[æ]~~ longer than six months;
- (5) Variances from standards adopted under this chapter may be granted upon application of an owner, user, contractor, or vendor. Application for variances shall correspond to procedures set forth in the rules adopted pursuant to this chapter. The director may issue an order for variance, if the director 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 issue a “permit to operate” regarding any boiler, pressure system, amusement ride, or elevator and kindred equipment if found to be safe in accordance with rules adopted pursuant to chapter 91;
- (B) The department may immediately revoke any “permit to operate” of any boiler, pressure system, amusement ride, 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 ~~[above mentioned]~~ aforementioned 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 the user, owner, or contractor is proceeding in good faith to abate all nonconforming conditions mentioned in department orders and the boilers, pressure systems, amusement rides, and elevators and kindred equipment are safe to operate; and
- (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 noncomplying boiler, pressure system, amusement ride, and elevator and kindred equipment are being brought into full compliance with the applicable standards and rules adopted pursuant to this chapter; provided that the period between an initial safety inspection or the inspection used as a basis for the issuance of a permit to operate, and any subsequent inspection of elevators and kindred equipment shall not exceed one year;
- (7) No person shall operate a boiler, pressure system, amusement ride, or elevator and kindred equipment ~~[which]~~ that are required to be inspected by this chapter or by any rule adopted pursuant to this chapter ~~[shall be operated]~~, except as necessary to install, repair, or test, unless a permit to operate has been authorized or issued by the department and remains valid; and
- (8) The department, upon the application of any owner, ~~[or]~~ user, or other person affected thereby, may grant time that 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~~ or elevators and kindred equipment requiring inspection pursuant to this chapter[-];
 - (2) The department shall inspect for the purpose of ~~insuring~~ ensuring 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~~ ensuring compliance with the ~~purpose~~ purposes and provisions of this chapter. This ~~section~~ paragraph shall not apply to single family dwellings or multiple dwelling units of less than six 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~~ ensuring compliance with the purposes and provisions of this chapter. This ~~section~~ paragraph shall not apply to single family dwellings[-];
 - (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~~ paragraph 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[-]; and
 - (8) Any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall not be liable in or made a party to any civil action ~~growing~~ arising 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[-]; and
 - (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,]~~ adopted pursuant to this chapter.

- (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]~~ the place [exists] is located 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]~~ adopted pursuant to this chapter, the department shall issue an order to render the construction or operation safe or in conformance with this chapter or the rules [and regulations] and deliver the ~~[same]~~ order 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]~~, any additions, repairs, improvements, or changes be made and ~~[such]~~ safety devices and safeguards be furnished, provided, and used as are reasonably required to ~~[insure]~~ ensure 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~~[-]~~ and 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]~~ the boilers, pressure systems, amusement rides, or elevators and kindred equipment are ~~[situated]~~ located or ~~[such]~~ the 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 depart-

ment 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 the director's 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]~~ the 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 the person may tend to incriminate the person or subject the person 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 the individual is compelled, after having claimed the individual's privilege against self-incrimination, to testify or produce evidence, documentary, or otherwise, except that ~~[such]~~ the individuals ~~[so]~~ testifying shall not be exempt from prosecution and punishment for perjury committed ~~[in-so]~~ while 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]~~ the 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;
 - (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~~[-]~~; and
- (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."

SECTION 3. Section 397-5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) All fees received by the department pursuant to this section shall be paid into the boiler and elevator ~~[special]~~ revolving fund.

(c) Effective July 1, 2012, the fees for inspections, permits, and examinations of boilers, pressure systems, elevators, kindred equipment, and amusement rides shall be as prescribed by the schedules in this section; provided that the director may adopt rules pursuant to chapter 91 to amend the fees specified in this section.

SCHEDULE A: Boiler and Pressure System Fees

Installation, Repair, and Alteration Permit Fees:

- (1) Power boilers (shall pass a hydrostatic test unless indicated otherwise):

Miniature electric (no hydrostatic test required)	\$190
Less than 500 square feet of heating surface	\$250
Greater than or equal to 500 and less than or equal to 3,000 square feet of heating surface	\$400
Greater than 3,000 square feet of heating surface	\$750
- (2) Heating boiler

Retrofit	\$190
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- (3) Pressure vessel

Retrofit	\$175
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- (4) Sterilizers and steam kettles

Retrofit	\$150
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- (5) Repair application fee

	\$200
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- (6) Alteration application fee

	\$500
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Examination and License Fees:

- (1) Boiler inspectors certificate of competency examination fee

	\$300
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- (2) Review of shops and facilities for the issuance of National Board or American Society of Mechanical Engineers certificate of authorization

	\$1,500
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- (3) Review of shops and facilities for the issuance of Non-Boiler External Piping certificate of authorization

	\$750
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- (4) Boiler inspector's Hawaii commission, initial and renewal

	\$75
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Internal and External Inspection Fees:

- (1) Power boilers:

Without manholes	\$150
With manholes but less than or equal to 3,000 square feet of heating surface	\$180
With manholes greater than 3,000 and less than or equal to 10,000 square feet of heating surface	\$260
With manholes and over 10,000 square feet of heating surface	\$450

(2) Heating boilers:	
Hot water supply	\$130
Steam and water heating without manholes	\$110
Steam, over 100 square feet but not over 500 square feet of heating surface	\$140
All with manholes and steam over 500 square feet of heating surface	\$170
(3) Pressure vessels:	
Routine inspections	\$65
Internal for air or water service	\$130
Ultrasonic testing	\$130
(4) For all other types of inspections an hourly fee is assessed	\$100
(5) Hydrostatic test	\$300
(6) School "specials" (non-code objects)	\$10
Reports and Permit Processing Fees:	
(1) Report and permit	\$25
(2) Permit reprint	\$20
(3) Signed permit card (old issue)	\$10
(4) Owner portal	\$5

SCHEDULE B: Elevator and Kindred Equipment Fees

Installation and Alteration Permits:

(1) Alteration involving only the replacement of up to two parts (such as a valve, a jack, or a cylinder)	\$150
(2) Alteration involving only cosmetic changes (such as car interior modernizations)	\$300
(3) Alterations of more than two parts, or components, and/or or subsystems:	
1 - 3 floors	\$600
4 - 9 floors	\$650
10 - 19 floors	\$700
20 - 29 floors	\$750
30 - 39 floors	\$800
40 or more floors	\$900
(4) Where alterations to four or more units at the same location are identical, the fee for each additional alteration permit shall be reduced by fifty per cent. The applications must ¹ be submitted at the same time to qualify for the fee reduction.	
(5) Installation of new elevators (including material lifts) and kindred equipment:	
Dumbwaiter	\$500
Escalator, moving walk, or moving ramp	\$500
Hand elevator [-manlift,] or stage lift	\$500
Wheelchair or stairway lifts	\$500
Elevator, 1 - 3 floors	\$600
Elevator, 4 - 9 floors	\$650
Elevator, 10 - 19 floors	\$700
Elevator, 20 - 29 floors	\$750
Elevator, 30 - 39 floors	\$800
Elevator, 40 or more floors	\$900

	[Aerial tramways	\$900]
	Personnel hoists	\$250
	Inclined tunnel lifts	\$500
	(For elevators, such as observation or deep well elevators, which have considerable rise but few openings, each ten feet of vertical rise shall be considered one floor for the purpose of determining installation or alteration permit fees.)	
(6)	Temporary use permits (construction car)	\$450
(7)	For each valid alteration or installation permit, the department shall provide one inspection per unit.	
(8)	The fee for each additional inspection or witnessing of tests, or both, shall be \$300 per day for up to two hours and \$600 per day for more than two hours if during the normal workday. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours.	
(9)	Each installation or alteration permit shall be valid for up to one year from date of issuance.	
	Inspection Fees:	
(1)	Permit renewal inspection fees:	
	Dumbwaiter	\$140
	Escalator, moving walk, or moving ramp	\$150
	Hand elevator[, manlift,] or stage lift	\$150
	Wheelchair or stairway lifts	\$150
	Hydraulic elevator - holed	\$150
	Hydraulic elevator - holeless	\$200
	Traction elevator:	
	1 - 3 floor rise	\$225
	4 - 9 floor rise	\$250
	10 - 19 floor rise	\$275
	20 - 29 floor rise	\$325
	30 - 39 floor rise	\$400
	40 or more floor rise	\$475
	[Aerial tramways	\$400]
	Personnel hoists	\$175
	Inclined tunnel lifts	\$220
(2)	Safety, load or internal test (witness fees):	
	3-year safety test	\$200
	5-year safety test	\$300
	Escalator internal	\$100
(3)	Permit renewal and witness fees are per inspection, which may constitute one day or part of the day. If the inspector is required to return on another day or at another time on the same day, additional fees shall be assessed at the rate of \$300 per day for up to two hours and \$600 per day for more than two hours. Fees for overtime hours shall be	

\$600 per day for up to two hours and \$1,200 per day for more than two hours.

SCHEDULE C: Amusement Ride Fees

Inspection Fees:

- (1) Permit renewal inspection fees:
Amusement ride \$100
- (2) Permit renewal fees are per inspection, which may constitute one day or part of the day. If the inspector has to return on another day or at another time within the same day, additional fees shall be assessed at the rate of \$300 per day for up to two hours and \$600 per day for more than two hours. Fees for overtime hours shall be \$600 per day for up to two hours and \$1,200 per day for more than two hours."

SECTION 4. Section 397-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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, who has satisfied the requirements established by the department, and who has received from the director or the director's authorized agent briefings and instructions regarding the rules ~~[and regulations]~~ pertaining to boilers and pressure systems in this State."

SECTION 5. Section 397-13, Hawaii Revised Statutes, is amended to read as follows:

"[§397-13] Boiler and elevator ~~[special]~~ revolving fund; establishment; ~~[purposes.] purpose.~~ (a) There is established in the state treasury the boiler and elevator ~~[special]~~ revolving fund, into which shall be deposited all fees collected pursuant to section 397-5 and any appropriation from the legislature. All interest and investment moneys earned on any moneys in the ~~[special]~~ revolving fund shall become part of the ~~[special]~~ revolving fund.

(b) The purpose of the ~~[special]~~ revolving fund is to provide for sufficient operating costs to carry out the purposes of this chapter. Moneys in the fund may be expended for:

- (1) Personnel and operating expenses;
- (2) Staff training and staff certification fees and expenses;
- (3) Preparation and dissemination of public information on safe installation and use of equipment regulated by this chapter;
- (4) Preparation of annual reports to the legislature as required by this chapter; and
- (5) Reimbursement to the general fund as required by this section.

(c) The director shall submit a report to the legislature on the status of the boiler and elevator ~~[special]~~ revolving fund, including expenditures and program results, not less than twenty days prior to the convening of each regular session.

(d) No later than ~~[five]~~ ten years from the date of the establishment of the ~~[special]~~ revolving fund, the director shall reimburse the general fund for the amount of any initial appropriation that was made by the general revenues of the State to the ~~[special]~~ revolving fund."

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SECTION 6. This Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2018.

(Approved July 10, 2018.)

Note

1. Prior to amendment “shall” appeared here.