

**"CHAPTER 397
BOILER AND ELEVATOR SAFETY LAW**

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" **[§397-1] Short title.** This chapter shall be known as the "Boiler and Elevator Safety Law". [L 1980, c 19, pt of §1]

" **[§397-2] 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. [L 1980, c 19, pt of §1]

" **[§397-3] 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. [L 1980, c 19, pt of §1]

- " **§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 be effective no 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 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 boiler, pressure system, amusement ride, or elevator and kindred equipment which 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 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 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 compliance with the purposes and provisions of this chapter. This section 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 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 the employee's 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 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 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 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;
 - (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. [L 1980, c 19, pt of §1; gen ch 1985; am L 1998, c 2, §96 and c 142, §3; am L 2000, c 246, §1; am L 2002, c 216, §2]

" **§397-5 Fees.** (a) The director may prescribe reasonable fees to be charged for inspection, examination, other services rendered and for permits, certificates, or licenses, the issuance of which are required by this chapter or by any rules of the department adopted pursuant to this chapter, and for:

- (1) Inspections by the 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 rules of the department; and
- (2) Examination of any person applying for permits, certificates, or licenses as required by this chapter or by any rules of the department.

(b) All fees received by the department pursuant to this section shall be paid into the boiler and elevator special 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 \$190
 - Retrofit \$160
 - (3) Pressure vessel \$175
 - Retrofit \$130
 - (4) Sterilizers and steam kettles \$150
 - Retrofit \$110
 - (5) Repair application fee \$200
 - (6) Alteration application fee \$500
- Examination and License Fees:
- (1) Boiler inspectors certificate of competency examination fee \$300

(2) Review of shops and facilities for the issuance of National Board or American Society of Mechanical Engineers certificate of authorization	\$1,500
(3) Review of shops and facilities for the issuance of Non-Boiler External Piping certificate of authorization	\$750
(4) Boiler inspector's Hawaii commission, initial and renewal	\$75
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
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- (2) Alteration involving only cosmetic changes (such as car interior modernizations) \$300
- (3) Alterations of more than two parts, or components, and/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 shall 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 the 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. [L 1980, c 19, pt of §1; am L 1998, c 142, §§4, 9; am L 1999, c 163, §18; am L 2002, c 39, §19; am L 2003, c 178, §10; am L 2012, c 103, §2]

" **§397-5.5 REPEALED.** L 2003, c 178, §10.

" **§397-6 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 the director's 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 meets the criteria of the American Society of Mechanical Engineers and the standards for the qualification of elevator inspectors of the American National Standards Institute and has satisfied requirements established by the department of labor and industrial relations. [L 1980, c 19, pt of §1; gen ch 1985; am L 1992, c 95, §1]

" **[§397-7] 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 the complainant's or witness' name or unless it has been determined by the attorney general that disclosure is necessary for enforcement and review of this chapter. [L 1980, c 19, pt of §1; gen ch 1985]

" **§397-8 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 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 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 of the department shall be assessed a civil penalty of not more than \$10,000 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 deposited into the general fund. Civil penalties owed under this chapter 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 the owner's, user's, contractor's, or vendor's principal office.

(f) Criminal offenses committed against any employee of the State acting within the scope of the employee's 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. [L 1980, c 19, pt of §1; gen ch 1985; am L 1999, c 229, §2; am L 2012, c 103, §3]

Cross References

Penal Code fines and imprisonment, see chapter 706, part III and IV.

" **[\$397-9] 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.

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 the owner's, user's, vendor's, or contractor's 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. [L 1980, c 19, pt of §1; gen ch 1985]

" **[§397-10] 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. [L 1980, c 19, pt of §1]

" **[§397-11] 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. [L 1980, c 19, pt of §1]

" **§397-12 Evidence.** No record or determination of any administrative proceeding under this chapter or any statement or report of any kind obtained, received, or prepared 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. [L 1980, c 19, pt of §1; am L 1987, c 44, §1]

" **[§397-13] Boiler and elevator special fund; establishment; purposes.** (a) There is established in the state treasury the boiler and elevator special 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 fund shall become part of the special fund.

(b) The purpose of the special 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 fund, including expenditures and program results, not less than twenty days prior to the convening of each regular session.

(d) No later than five years from the date of the establishment of the special 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 fund. [L 2012, c 103, §1]