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Sens. Hagan, Spada

Effective date: *

ACT SUMMARY

- Reorganizes existing law pertaining to elevators, boilers, bedding, and stuffed toys.

Bedding and stuffed toys

- Transfers any administrative and enforcement duties under the bedding and stuffed toys laws that are the responsibility of the Director of Commerce to the Director's subordinate, the Superintendent of Industrial Compliance.
- Requires that the content of bedding and stuffed toys regulated by the Superintendent be tested or analyzed at an established laboratory prior to being sold or offered for sale.
- Modifies exemptions to the laws governing bedding and stuffed toys.
- Imposes record retention and quality control requirements for those persons who deal in bedding and stuffed toys.
- Sets forth the registration renewal process for persons governed by bedding and stuffed toys laws.

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Adds options for the Superintendent on how to manage non-complying bedding or stuffed toy materials.
- Allows the Superintendent to recover actual expenses for investigations conducted outside of Ohio under the bedding and stuffed toys laws.
- Sets forth procedures and guidelines governing records audits performed on persons regulated under bedding and stuffed toys laws.
- Creates investigation powers for the Superintendent to enforce bedding and stuffed toys laws.
- Modifies penalties that may be imposed against persons who violate laws governing bedding and stuffed toys.

Boilers and steam engines

- Reorganizes the laws governing persons who operate boilers and steam engines.
- Expands the Superintendent's rule-making authority related to the regulation of boilers and operators.
- Eliminates references to the five boiler operator regulation districts in the state and the examiners of steam engineers.
- Clarifies the different types of licenses available to boiler operators and sets forth in statute the license and examination process one must complete to obtain a license.
- Transfers duties to set certain fees in the boiler laws from the Board of Building Standards to the Director of Commerce.
- Eliminates for boiler inspectors the provision that all certificates of competency or commissions issued prior to October 15, 1965, are valid until revoked.
- Eliminates the requirement that boilers be stamped and instead requires inspection numbers to be stamped on tags attached to the boilers.

- Requires all persons, not just contractors, to be registered with and obtain permits from the Division of Industrial Compliance before installing or making major repairs or modifications to boilers.
- Eliminates certain notice provisions applicable to internal and external boiler inspections.
- Adds the authority for the Superintendent or a general boiler inspector to order the owner immediately cease the operation of a boiler or unfired pressure vessel found to be a hazard to explode.
- Modifies penalties that may be imposed against persons who violate laws governing boilers.

Elevators

- Modifies inspection requirements for elevators and other related devices.
- Modifies the existing fee structure for the inspection of elevators and other related devices.

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CONTENT AND OPERATION

Bedding and stuffed toys

Prohibitions

Under prior law, all persons manufacturing, making, or wholesaling bedding and all persons manufacturing, making, wholesaling, or importing stuffed toys that were sold, consigned, delivered for sale or offered for sale, or remaking, repairing or renovating bedding, were required to register with the Superintendent of Industrial Compliance (hereafter "Superintendent") within the Department of Commerce (sec. 3713.02).

The act eliminates the registration requirement for those persons who make bedding or stuffed toys and for those who remake or repair bedding. The act imposes the registration requirement for those persons who reupholster stuffed toys or bedding. (Sec. 3713.02(A).)

Under prior law, secondhand bedding and stuffed toys were required to be "sterilized" prior to sale in accordance with rules adopted by the Superintendent (secs. 3713.051 and 3713.09). The act replaces the term "sterilized" with



"sanitized" and uses the term "sanitize" throughout the act (sec. 3713.02 and throughout).

The act also adds that the possession of any article of bedding or stuffed toy in the course of business by a person required to obtain registration by law or by that person's agent or servant is prima-facie evidence of the person's intent to sell the article of bedding or stuffed toy (sec. 3713.02(E)).

Administrative duties and authority

Under prior law, the Director of Commerce was required to adopt rules and perform other administrative duties pertaining to the administration of the laws governing bedding and stuffed toys. The act transfers those rule-making and other administrative duties to the Superintendent. (Sec. 3713.04.)

The requirement that the person who administers the chapter make recommendations to the Director of Administrative Services relative to the qualifications and duties of the inspectors used to inspect bedding and stuffed toys is eliminated. (Sec. 3713.04(B).) Instead, under the act, this authority lies directly with the Superintendent (secs. 3713.04 and 3713.09(A)).

Continuing law allows the Director of Commerce to increase registration fees and renewal fees not more than 50% higher than established fees. Prior law required the approval of the Controlling Board to make this increase (sec. 3713.02(C)). The act retains the authority to increase registration and renewal fees by up to 50% more than fees established in law, but removes the requirement to obtain approval from the Controlling Board to do so (sec. 3713.04(B)(1)).

The act adds authority for the Superintendent to adopt rules in accordance with Chapter 119. of the Revised Code to establish standards, on a reciprocal basis, for the acceptance of labels and laboratory analyses from other states where the labeling requirements and laboratory analysis standards are substantially equal to the requirements of Ohio, provided the other state extends similar reciprocity to labels and laboratory analysis conducted under relevant Ohio law (sec. 3713.04 (B)(2)).

In addition to authority that exists under continuing law, the act adds the authority for the Superintendent to issue administrative orders and conduct hearings in accordance with Chapter 119. of the Revised Code, to deny a registration (rather than only to suspend or revoke as under current law), and to designate established laboratories in various sections of the state that are qualified to make tests and analysis of materials used in the manufacture of bedding and stuffed toys (sec. 3713.04(C)).

Under continuing law, the Director of Commerce has the authority to set the fees and charges for tests related to the inspection of materials used in the manufacture of bedding and stuffed toys (sec. 3713.07). The act clarifies that the Superintendent has the authority to adopt rules to determine the same (sec. 3713.04(C)(2)).

The act eliminates the authority of the Superintendent (Director of Commerce, under prior law) to make a variation on a rule, if the spirit of the rule is observed, where the rule creates a practical difficulty or undue hardship in carrying out the laws governing bedding and stuffed toys. As a consequence, the act also eliminates the authority to subsequently approve, amend, modify, or rescind the rule governing the condition of any variations allowed. (Sec. 3713.04.)

Under continuing law, articles of bedding must have labels attached that contain information as required by the Superintendent. Stuffed toys are required to have labels attached that contain the registered name and address of the manufacturer or importer or the license number of the manufacturer or importer. (Sec. 3713.05.) The act allows the Superintendent to require other identifying information on stuffed toys labels, consistent with the authority the Superintendent has with regard to labels on articles of bedding (sec. 3713.08).

Application for registration

Under prior law, the Superintendent was required to issue to each applicant, a certificate of registration showing the person's name, address, registration number, and other pertinent information considered to be necessary by the Superintendent (sec. 3713.02). The act eliminates the requirement to issue an actual certificate to the registrant (sec. 3713.05(B)).

Registration exemptions

Under prior law certain organizations that were exempt from federal income tax and that operated exclusively to provide recreational or social services to persons age 55 and over were exempt from the bedding and stuffed toy registration requirement if the executive officer or executive director of the organization submitted a signed affidavit to attest that the organization qualified for the exemption. Organizations that qualified for this exemption were required to submit a report to the Superintendent every six months. The reports were required to be submitted in the format prescribed by the Superintendent and to contain the total number of articles of bedding and stuffed toys that were manufactured for sale, consigned, or delivered for sale, held for sale in Ohio or that were remade, repaired, or renovated for and returned to an owner in Ohio. The organization was required to pay four cents for each article of bedding or stuffed toy that was manufactured for sale, consigned, or delivered for sale, held

for sale in Ohio or that was remade, repaired, or renovated for and returned to an owner in Ohio. An organization was allowed to apply for an exemption from this requirement but was still subject to not more than a \$100 annual license privilege fee.

Under the act, an organization is exempt from registration requirements, but not the reporting requirements, if both of the following are true:

(1) The organization is one that meets the criteria described in section 501(c)(3) of the federal tax code and is exempt from income tax under section 501(c) of that same code;¹

(2) The organization is operated exclusively to provide recreation or social services.

The act eliminates any age restrictions of the participants of the organization or the need for an executive officer or director to submit a signed affidavit attesting to the organization's qualifications for the exemption. The act also eliminates for these types of organizations, the option to obtain an exemption from the reporting requirements and the four cent per article fee associated with the manufacture, wholesale, consignment, delivery for sale, remaking, repairing, or renovating for sale or for return to Ohio. (Secs. 3713.05(B) and 3713.06(A).)

Record retention

Under continuing law, unless otherwise exempt, each registrant who imports bedding or stuffed toys into Ohio for retail sale or use in Ohio and any person who manufactures bedding or stuffed toys in Ohio for retail sale or use in Ohio is required, once every six months, to submit a report to the Director of Commerce in a form and manner prescribed by the Director. The reports are required to contain the total number of articles of bedding and stuffed toys that were manufactured for sale, consigned, or delivered for sale, held for sale in Ohio or that were remade, repaired, or renovated for and returned to an owner in Ohio. Registrants must pay four cents for each article of bedding or stuffed toy that was manufactured for sale, consigned, or delivered for sale, held for sale in Ohio or

¹ *To qualify as a so-called 501(c)(3) organization, an organization must be organized and operated exclusively for religious, charitable, scientific, literary, educational, or public safety testing purposes, or for the purpose of fostering national or international amateur sports competition or preventing cruelty to children or animals. None of the organization's net income (if any) may inure to the benefit of any private person, no substantial part of the organization's activities may consist of carrying on propaganda or otherwise attempting to influence legislation, and the organization may not participate in political campaigns for candidates for public office.*

that were remade, repaired, or renovated for and returned to an owner in Ohio. (Sec. 3713.02(D).)

The act adds the requirement that every importer, manufacturer, or wholesaler of stuffed toys or articles of bedding, and every mobile home and recreational vehicle dealer, conversion van dealer, secondhand dealer, and auction house retain records designated by the Superintendent in rule (the context of the act indicates that the records designated by the Superintendent are those records used to make the report described above) for the time period established by the Superintendent in rule. The act also requires the same types of businesses to make sufficient investigation of its own records to ensure that the information reported to the Superintendent is accurate. (Secs. 3713.06(B) and (C).)

Registration renewal

Continuing law requires bedding and stuffed toy registrants to pay an annual license privilege fee of \$50, and renovators to pay an annual fee of \$35, at a time determined by the Director of Commerce (sec. 3713.02). The act establishes a more specific renewal process. Under the act, registration expires annually on the last day of the month in the month that the registration was first obtained. The Superintendent is required to renew registration in accordance with the standard license renewal procedure found in current law. (See Chapter 4745., not in the act.) The act allows a 90-day grace period after a registration expires within which a registrant may renew the registration by paying a \$100 penalty plus the new renewal fee of \$50, unless the registrant is a renovator only, in which case the fee is \$35. If the registrant fails to renew a registration within the 90-day period following the expiration of the registration, the former registrant must apply for a new registration, thus obtaining a new registration number, and pay for the new registration (\$50 unless increased by the Superintendent under the Superintendent's discretionary authority. See "Administrative duties and authority," above.) (Sec. 3713.07.)

Materials testing and sanitation of secondhand items

Under continuing law, the Director of Commerce (Superintendent of Industrial Compliance in the act) may appoint two inspectors to inspect every establishment where bedding or stuffed toys are manufactured, made, remade, renovated, repaired, sterilized, sold, or offered for sale, or where previously used material is processed for use. When an inspector finds it necessary to have a test or analysis of material used in the manufacture of bedding or stuffed toys conducted, the inspector has the authority to have the test or analysis performed. (Secs. 3713.03 and 3713.07.)

The act retains the inspection, testing, and analysis authority of inspectors and removes the limit on the number of inspectors that may be appointed by the Superintendent (sec. 3713.09(A)). It also adds the requirement that every manufacturer, maker, or wholesaler of stuffed toys or items of bedding sold or offered for sale must have the material content tested or analyzed at an established laboratory designated by the Superintendent before the bedding or stuffed toy can be sold or offered for sale (sec. 3713.08(A)).

Under continuing law, unless otherwise exempt, sellers who regularly engage in the sale, either retail or wholesale, of secondhand articles of bedding or stuffed toys must sanitize items in accordance with rules adopted by the Superintendent (sec. 3713.051). The act exempts furniture more than 50 years old from this sanitation requirement (sec. 3713.08(D)(2)).

Non-complying articles

Under prior law, when an inspector seized articles that the inspector found to be in violation of the laws governing bedding and stuffed toys, the inspector was required to make an immediate report of that finding to the Superintendent who may order further investigation. When the Superintendent had cause to believe that a person had violated the laws governing bedding and stuffed toys, the Superintendent was required to cause the prosecution of that person. (Sec. 3713.03.)

Under the act, the Superintendent, instead, has the option to either:

(1) Order the return of the articles to the owner for proper treatment, tagging, or labeling, or other action as ordered by the Superintendent, subject to the requirement that the articles be reinspected at cost to the owner, prior to being sold or offered for sale; or

(2) Report the violation to the appropriate prosecuting attorney or city law director for further proceedings. (Sec. 3713.09(B)(2).)

Records audits

Under continuing law, when an inspector has cause to believe that any bedding or stuffed toy is not tagged or labeled as required by law, the inspector, in addition to other actions, may examine any and all purchase records in order to determine the contents of materials used by the person being inspected (sec. 3713.03).

The act expands the authority to inspect records and defines the process and limitations upon inspection. Under the act, the Superintendent, at reasonable times and upon reasonable notice, may examine or cause to be examined the records of

any importer, manufacturer, or wholesaler of stuffed toys or articles of bedding, mobile home and recreational vehicle dealer, conversion van dealer, secondhand dealer, or auction house to determine compliance with the laws governing bedding and stuffed toys. The Superintendent may enter into contracts, pursuant to procedures prescribed by the Superintendent, with persons to examine records to determine compliance with the laws governing bedding and stuffed toys. These persons also may collect and remit to the Superintendent any amounts due for fines or costs of inspection or otherwise as allowed by law.

Records audited in this manner are confidential and are not allowed to be disclosed except as provided in the public records law (section 149.43 of the Revised Code, not in this act), or as the Superintendent finds necessary for the proper administration of the laws governing bedding and stuffed toys.

If to determine compliance with the laws governing bedding and stuffed toys, the Superintendent is required to investigate outside of Ohio, the act gives the Superintendent the discretionary authority to require the investigated or examined person to pay the actual expense of the investigation or examination. The Superintendent must provide an itemized statement of actual expenses to the person from whom the Superintendent seeks to collect expenses. (Secs. 3713.09(C), (D), and (E).)

Compliance with the laws

The act gives the Superintendent certain enforcement powers when the Superintendent has reason to believe, from the Superintendent's own information, upon complaint, or otherwise, that any person has engaged in, is engaging in, or is about to engage in any practice prohibited by the laws governing bedding and stuffed toys, or when the Superintendent has reason to believe that it is necessary for public health and safety. Specifically, the act gives the Superintendent the authority to do any of the following:

(1) Investigate violations, subpoena witnesses, and make application to the appropriate court of common pleas for an order to enjoin the violation. Upon a showing by the Superintendent that any registrant or person acting in a manner that requires registration has violated or is about to violate the law, an injunction, restraining order, or other order as may be appropriate must be granted by the court.

(2) Compel by subpoena the attendance of witnesses to testify in relation to any matter over which the Superintendent has jurisdiction and that is the subject of inquiry and investigation by the Superintendent, and require the production of any book, paper, or document pertaining to the matter. If a person fails to file any statement or report, obey a subpoena, give testimony, or produce items as ordered,

the court of common pleas of any county in the state, upon application made by the Superintendent, is required to compel obedience by attachment proceedings for contempt.

(3) Suspend or revoke the registration of any importer, manufacturer, or wholesaler of bedding or stuffed toys, mobile home or recreational vehicle dealer, conversion van dealer, secondhand dealer, or auction house (these options exist in current law but first require a conviction before any of these options are available).

(4) Submit evidence of the violation or violations to any city prosecutor, city director of law, or prosecuting attorney with authority to prosecute (this option exists in current law, but requires an affidavit from the Superintendent). If the city prosecutor, city director of law, or prosecuting attorney with authority to prosecute fails to prosecute, the Superintendent must submit the evidence to the Attorney General who may proceed with the prosecution. (Sec. 3713.09 (F).)

Criminal penalties

Under prior law, a person found to have done any of the following was subject to a fine of not less than \$25 nor more than \$500 or imprisonment not to exceed six months:

(1) Sells, offers for sale, or possesses for the purpose of selling or offering for sale an article of bedding or stuffed toy that is not tagged or that is falsely tagged;

(2) Uses material in bedding or stuffed toys that has been used by or around a person with a contagious or infectious disease;

(3) Removes, conceals, alters, or defaces a label;

(4) Sells, offers to sell, or possesses with the purpose of selling or offering to sell a secondhand article that has not been sanitized.

The act modifies this penalty. Any person who does any of the following is guilty of a fourth degree misdemeanor (not more than \$250 fine, or more than 30 days incarceration, or both):

(1) Import, manufacture, renovate, or reupholster stuffed toys or articles of bedding without first registering to do so;

(2) Manufacture, offer for sale, sell, deliver, or possess for those purposes, an article of bedding or stuffed toy that is labeled improperly;

(3) Sell or offer for sale any secondhand article of bedding or stuffed toy that has not been sanitized.

The act makes false labeling a third degree misdemeanor (not more than a \$500 fine, or more than 60 days incarceration, or both). The act removes specific reference to penalties for the use of material exposed to a contagious or infectious disease, however, such use may fall within penalties that apply to mislabeled articles or secondhand articles that have not been sanitized. (Sec. 3713.99.)

Definition changes

(sec. 3713.01)

Under continuing law, "person" means an individual, group of individuals, a partnership, corporation, or association. The act expands this definition to also include business trusts, estates, trusts, limited liability companies, limited liability partnerships, and joint stock companies.

Under prior law, "bedding" included upholstered furniture "filled with material." The act eliminates "filled with material."

The act eliminates the definitions for the following words that have become unnecessary or that have been addressed within the context of the act: "material," "new material," "secondhand material," "shredded clippings," and "plaything."

The definition of "secondhand articles of bedding" that appeared in prior law was modified by the act to include all secondhand articles, and is not limited to bedding.

The definition of "stuffed toy" in prior law only included items intended for use by children. Under the act, "stuffed toy" is not limited to items used by children, but rather to items intended for use as a plaything or for an educational or recreational purpose that is wholly or partially stuffed with material.

The act adds a definition for "tag" or "label," to be used interchangeably, that means any material prescribed by the Superintendent to be attached to an article that contains information required under the laws governing bedding and stuffed toys.

Boilers

Organization

Under prior law, there were two separate chapters of the Revised Code that regulate steam engineers and boiler operators (Chapter 4739.) and boilers (Chapter

4104.). The act consolidates those two chapters into one (Chapter 4104.). This analysis first examines the changes to the laws regulating steam engineers and boiler operators, and then examines the changes made to the laws that regulate the boiler equipment.

Boiler operators and steam engineers

Administration

Prior laws related to persons who operate steam boilers and engines and stationary steam boilers were administered by the Superintendent but no rule-making authority was specifically granted to the Superintendent in law (sec. 4739.01).

The act allows the Superintendent to adopt, amend, and repeal rules exclusively for the issuance, renewal, suspension, and revocation of certificates of competency and certificates of operation, conduct hearings in accordance with Chapter 119. of the Revised Code related to these actions, and for the inspection of boilers and their appurtenances, and unfired pressure vessels. The act prohibits the Superintendent from adopting rules related to the construction, maintenance, or repair of boilers and their appurtenances, or repair of unfired pressure vessels. (Sec. 4104.06(B) and (C).)²

Duties

The act eliminates a requirement in current law imposed upon the Superintendent to divide the state into five districts, and with the approval of the Director of Commerce, appoint examiners of steam engineers, each of whom must be competent and practical and have at least five years experience. (Sec. 4739.01.)

Prohibitions

Under prior law, no person was permitted by law to operate a stationary steam boiler or engine of more than 30 horsepower (a horsepower equaling 12 square feet of boiler heating surface) without first obtaining a license from the Superintendent. Furthermore, no owner or user or agent of an owner or user of a steam boiler or engine as previously described, was allowed to permit the steam boiler or engine to be operated unless it was in the charge of a licensed engineer. (Sec. 4739.04.)

² Continuing law gives this type of regulatory authority to the Board of Building Standards (sec. 4104.02(A)).

Under the act, the prohibitions are expanded to be more specific. The act prohibits a person from operating a low pressure boiler at more than 30 horsepower, unless the person is licensed as a steam engineer, high pressure boiler operator, or low pressure boiler operator. A person is prohibited from operating a power boiler at more than 30 horsepower unless the person is licensed as a steam engineer or high pressure boiler operator or the person is working under the direct supervision of a steam engineer or high pressure boiler operator. Finally, a person is prohibited from operating a stationary steam engine at more than 30 horsepower unless the person is licensed as a steam engineer or is working under the direct supervision of a steam engineer. (Sec. 4104.05.)

Obtaining a license to operate

Under prior law, a person could have obtained a license to act as a steam engineer, to operate or have charge of a stationary steam boiler of more than 30 horsepower, except boilers in the charge of a licensed engineer, and to operate or have charge of a stationary steam boiler of more than 30 horsepower, carrying a pressure of no more than 15 pounds per square inch. To obtain any of these types of licenses, a person was required to apply to a steam engineer examiner on a form furnished by the examiner. The person then took an examination on topics relevant to the license and if the person passed the examination in accordance with rules adopted by the Superintendent, the person was granted a license. Licenses for each discipline were valid for one year from the date of issue and were renewed upon application to the examiner without re-examination. Upon receipt of written charges, the examiner, after notice and hearing, had the authority to revoke the license of any person guilty of fraud in passing the examination or who, for any cause had become unfit to operate or have charge of the boiler for which the person was licensed to operate. Appeals were made in accordance with Chapter 119. of the Revised Code. Stationary steam boiler operator licensees licensed to operate at no more than 15 pounds of pressure per square inch were required to appeal to the Superintendent who was required to review the proceedings of the examiner and then decide the merits of the appeal.

In the case of a steam engineer, upon written charges, an examiner had the authority to revoke the license of a person guilty of fraud in obtaining the license, or who was adjudicated incompetent for the purpose of holding a license and had not been restored to legal capacity for that purpose, or who was addicted to liquor or drug habits to such a degree as to render the person unfit to discharge the duties of a steam engineer. A steam engineer was entitled to renew the license annually, unless the examiner, for cause shown, refused the renewal.

Under continuing law, the fee for examination for all license applicants is \$50, to be paid at the time of examination. The fee for each original or renewal license is \$35. All fees are to be paid by money order or personal or certified



check, to the Division of Industrial Compliance, which is required to transmit the money to the state treasurer to the credit of the industrial compliance operating fund. The Director of Commerce, subject to the approval of the Controlling Board, may establish fees in excess of these fees, but not to exceed a 50% increase. (Secs. 4739.05 to 4739.07; secs. 4739.12 to 4739.14.)

The act retains the same fee structure, but, in lieu of the provisions described above, sets forth specific qualifications that an applicant must demonstrate in order to be qualified to take an examination to obtain a license.

To obtain a steam engineer, high pressure boiler operator, or low pressure boiler operator license under the act, an applicant first must submit to the Superintendent a written application on a form prescribed by the Superintendent. The application must contain information satisfactory to the Superintendent to demonstrate that the applicant meets the qualifications of the type of license for which the applicant applies, as set forth below. The application has to be filed with the Superintendent not more than 60 days and not less than 30 days before the license examination is offered. (Sec. 4104.19(A).)

To qualify to take the examination the applicant must be at least 18 years of age and possess one year of experience in the operation of steam engines, high pressure boilers, or low pressure boilers as applicable to the type of license being sought, or a combination of experience and education for the type of license being sought as determined by the Superintendent. No applicant qualifies to take the examination or to renew a license if the applicant violates rules governing steam engine and boiler operation or if the applicant obtained or renewed the applicant's license by fraud, misrepresentation, or deception. (Sec. 4104.19(B) and (C).)

The act requires the Superintendent to select and contract with one or more persons to do all of the following relative to licensure examinations: prepare, administer, score, and maintain confidentiality of the examinations; maintain responsibility for all associated expenses related to the examination; charge each applicant a fee for administering the examination, in an amount authorized by the Superintendent, and design the examination for each type of license to determine the applicant's competence. (Sec. 4104.19(E).)

License renewal

Each license issued expires annually under the act, as under prior law. The act specifies that licenses may be renewed not more than 90 days before the license expires. (Sec. 4104.19(F).)

Discipline of licensees

The act allows the Superintendent to suspend, revoke, or refuse to issue a license upon finding that a licensee or an applicant for a license has violated the laws governing steam engineers and high and low pressure boiler operators and eliminates the reference to specific charges found in current law (see **Obtaining a license to operate**) (sec. 4104.19(G)).

Penalties for operating a regulated boiler or steam engine without a license

Under continuing law, persons are prohibited from operating steam boilers or engines or stationary steam boilers that require a license without first taking an examination, obtaining a license, and renewing the license annually (secs. 4739.09 and 4739.15). The penalty for doing so under prior law was not less than \$10 nor more than \$100 (sec. 4739.99). Regulated persons also were prohibited from failing to exhibit a license under glass in a conspicuous place in the person's engine room (sec. 4739.08). A person who failed to do so was subject to a fine of not more than \$5 (sec. 4739.99).

Under the act, persons still are required to take an examination, and to obtain and maintain a license in order to legally operate steam boilers or engines or stationary steam boilers, however, the penalty for violating the law is characterized as a minor misdemeanor under the act (not more than a \$100 fine) (sec. 4104.99). The act does not prohibit or penalize the failure to display a license.

Boiler operation and inspectors of boilers

Board of Building Standards duties

Under continuing law, the Board of Building Standards within the Department of Commerce (hereafter "Board") has a statutory duty to formulate rules, prescribe tests, and establish fees relating to the safe operation of boilers and unfired pressure vessels. Under prior law, one of those duties was to make a standard form of certification of operation for boilers. The Board also was required to establish an annual fee to be charged by the Superintendent for each certificate of competency or commission the Superintendent issues. (Secs. 4104.02(D) and 4104.08.)

The act eliminates the duty to make a standard form of certification of operation for boilers (sec. 4104.02(D)). The act also transfers the duty to set the annual fee for certificates or commissions from the Board to the Director of Commerce (sec. 4104.08(C)).

Certificates of competency to inspect boilers and unfired pressure vessels

Under continuing law, the Superintendent examines and issues certificates of competency to persons who apply and succeed at becoming inspectors of boilers and unfired pressure vessels. A person obtains a certificate of competency, and therefore becomes qualified to inspect boilers and unfired pressure vessels for the Superintendent by making an application for examination in writing and paying a \$50 fee. If the applicant passes a written examination and is accepted on the merits of the applicant's application, the Superintendent is required to issue the applicant a certificate of competency. Then, the Superintendent must issue a commission to the effect that the holder is authorized to inspect boilers and unfired pressure vessels. Prior law allowed a rejected applicant to re-take an examination after the expiration of 90 days and upon payment of an examination fee of \$50 (sec. 4104.07).

The act eliminates the provision regarding re-taking the examination (sec. 4104.07). It also specifies that the Superintendent issues either a general or special inspector commission (sec. 4104.08(D)).

Revocation of certificates of competency

The act eliminates from current law what now appears to be an obsolete provision to the effect that all certificates of competency or commissions issued prior to October 15, 1965, are valid unless revoked (sec. 4104.09).

Stamping a boiler

Under continuing law, each inspected boiler is assigned a number by the Superintendent. Under prior law that number was either stamped on the boiler, or in the case of a cast iron boiler, stamped on a nonferrous metal tag affixed to the boiler (sec. 4104.15). The act eliminates the requirement to stamp the boiler itself, and instead only requires the number to be stamped on the nonferrous metal tag and affixed to the boiler in every case (sec. 4104.15(E)).

Prior law allowed any state or municipal corporation to designate from holders of certificates of competency, persons to inspect and stamp boilers and unfired pressure vessels during construction under rules adopted by the Board of Building Standards, provided the boiler or unfired pressure vessel conformed with every detail of the rules (sec. 4104.08). The act eliminates this provision.

Installation and repair of boilers

Under prior law, every contractor was required to be registered with the Division of Industrial Compliance and obtain a permit before installing or making major repairs or modifications to any boiler (sec. 4104.101). The act prohibits any

person, not just contractors, from installing or making any major repairs or modifications to any boiler without first registering with the Division of Industrial Compliance and obtaining a permit to do so (sec. 4104.101(A) and (B)).

Certificates of operation and inspections

Under continuing law, owners of boilers required to be inspected by the Superintendent must prepare the boiler for internal and external inspection. Prior law required the inspector to give the boiler owner or user 14 days' notice to prepare the boiler for the inspection, but need not give notice for inspections that occur under operating conditions. (Sec. 4104.14.) The act eliminates reference to any notice provisions for inspections.

Prior law required an owner or user of a boiler to obtain an appropriate certificate of operation and to obtain a new one on or before the expiration date of the owner's or user's existing certificate of operation. The owner or user was prohibited from operating the boiler after the expiration date of a certificate without obtaining a new one. The act eliminates reference to expiration dates and instead simply prohibits the owner or user of a boiler to operate the boiler without first obtaining a certificate of operation (sec. 4104.15(A)).

Under prior law, certificates of operation were issued and renewed in accordance with and at dates prescribed by rules and regulations adopted by the Board of Building Standards (sec. 4104.17). The act transfers this authority to the Superintendent.

Fees

The act eliminates the current law requirement that a fee must be paid to the Superintendent before a certificate of operation is issued to the owner or user of a boiler (sec. 4104.18).

Continuing law penalizes any person who fails to pay an inspection fee within 45 days after the inspection with a late payment equal to 25% of the inspection fee. The act applies this same penalty to invoiced renewal or invoiced inspection fees. Also, the first day of the 45-day grace period begins to run on the date the invoice is dated, not on the day of the actual inspection. The 25% penalty fee is equal to 25% of the amount of the invoiced fee. (Sec. 4104.18(E).)

Boiler working condition

Under continuing law, if an inspector finds that a boiler is not in safe working condition the inspector is required to immediately notify the owner or user and report the same to the Superintendent who is required to withhold or

withdraw the owner's certificate of operation until the boiler is safe to operate (sec. 4104.15).

The act adds unfired pressure vessels to the equipment to be inspected (throughout the regulatory section of the boiler sections of the act) and allows the Superintendent to revoke, suspend, or deny the certificate of operation and not to renew the same until the equipment is brought into a safe condition for operation (sec. 4104.15(C)).

The act also adds that if the Superintendent or a general boiler inspector finds that an unfired pressure vessel or boiler or a part thereof poses an explosion hazard that reasonably can be regarded as posing an imminent danger of death or serious physical harm to persons, the Superintendent or the general boiler inspector must seal the unfired pressure vessel or boiler and order, in writing, the operator or owner of the unfired pressure vessel or boiler to immediately cease the unfired pressure vessel's or boiler's operation. The order is effective until the nonconformities are eliminated, corrected, or otherwise remedied, or for a period of 72 hours from the time of issuance, whichever occurs first. During the 72-hour period, the Superintendent may request that the prosecuting attorney or city attorney of Franklin county (or of the county in which the unfired pressure vessel or boiler is located) obtain an injunction restraining the operator or owner of the unfired pressure vessel or boiler from continuing its operation after the 72-hour period expires or until the nonconformities are eliminated, corrected, or otherwise remedied. (Sec. 4104.15(D).)

Compliance with child-support orders

Under prior law, the Chief of the Division of Boiler Inspection was required to comply with laws relating to child-support orders and license and certificate holders (secs. 4104.21 and 3123.43, not in this act). Under the act, the Superintendent assumes this responsibility. (Sec. 4104.21.)

Penalties

(sec. 4104.99)

Under prior law, any person who operated a boiler without a certificate of operation or a unfired pressure vessel without the appropriate documentation, or any person who prevented or hindered inspections, was subject to a fine of not less than \$20 or more than \$500. Under the act, the penalty is changed to a third degree misdemeanor (not more than \$500 or more than 60 days incarceration or both).



Continuing law requires contractors to be registered and to obtain a permit before installing or making major repairs or modifications to a boiler. Contractors who violated that provision under prior law were subject to a fine of not more than \$500. The act applies the prohibition to all persons and changes the penalty to a third degree misdemeanor.

The act eliminates an existing law penalty that subjects a person who violates an order to enjoin that person's actions with a fine of not less than \$100 nor more than \$5,000.

Definitions

Under prior law, "unfired pressure vessel" referred to a vessel in which the pressure was obtained from an external source or by the application of heat from an indirect source. Under the act, the definition is expanded to include a container for the containment of pressure, either internal or external that may be obtained from an external source or by the application of heat from a direct or indirect source or any combination thereof (sec. 4104.01(G)).

The act creates a definition for "stationary steam engine" which means an engine or turbine in which the mechanical force arising from the elasticity and expansion action of steam, or from its property of rapid condensation, or from a combination of the two, is made available as a motive power (sec. 4104.01(I)).

Elevators

Inspections

Prior law required every passenger elevator, escalator, moving walk, and freight elevator, including gravity elevators to be inspected once every six months. The act changes the inspection period to twice every 12 months (sec. 4105.10(A)) and adds authority for the Board of Building Standards to designate by rule, classifications of passenger elevators with a capacity of 750 pounds or less that must be inspected once every 12 months (sec. 4105.10(C)). While the act does not appear to be changing the total number (2) of inspections an elevator must undergo, the effect of the changes seems to be to give the Division of Industrial Compliance greater flexibility as to when those two inspections may occur.

Continuing law also requires power dumb-waiters, hoists, and other lifting or lowering apparatus, permanently installed either on or between rails or guides to be inspected once every 12 months (sec. 4105.10). The act clarifies that the inspection requirement applies only to the listed items that are not designed to carry persons (sec. 4105.10(B)).

Installation and inspections

Under continuing law, before any new elevator of a permanent nature is erected or removed, the party responsible for the elevator is required to submit specifications in duplicate to the Division of Industrial Compliance. The act clarifies that the specifications need to be submitted not only before the elevator is removed but also is installed in its new location (sec. 4105.16).

Prior law also classified the final inspection, before operation, of a permanent, new, or repaired elevator as a special inspection required to be made by a general inspector, but the Superintendent was allowed to designate a special inspector of a municipal corporation to make the final inspection of any permanent elevator located in the inspector's municipal corporation. The act eliminates the classification of the inspection as special and requires that it be made by a general inspector or a special inspector designated by the Superintendent. References to municipal corporations are eliminated. (Sec. 4105.16.)

Inspection fees

Under prior law, any inspection or attempted inspection that, due to no fault of the general inspector, was not successfully completed by a general inspector of an elevator required to be inspected by law was \$30 plus \$5 per every floor where the elevator stopped. Under continuing law, the Superintendent is allowed to charge a fee of \$125 plus \$5 per every floor where the elevator stops for the reinspection of an elevator when a previous attempt is unsuccessful through no fault of the general inspector or Division of Industrial Compliance. (Sec. 4105.17.)

The act clarifies that fees apply to each inspection or attempt to inspect by a general inspector in either of the following cases:

- (1) Before the operation of a permanent new elevator prior to the issuance of a certificate of operation;
- (2) Before operation of an elevator being put back into service after a repair.

Also, the fee is decreased from \$30 to \$20 and the per floor fee is increased from \$5 per floor to \$10 per floor.

The act also clarifies that the Superintendent is allowed to charge the \$125 plus \$5 per floor fee for reinspection, in addition to the original inspection fee (sec. 4105.16(A)). The act adds the same inspection protocol for permanent new escalators or moving walks inspected prior to operation. The fee associated with this type of inspection is \$300 and an additional charge of \$150 for a reinspection



when a previous attempt is unsuccessful do to no fault of the inspector or Division of Industrial Compliance. (Sec. 4105.16(B).)

Under prior law, the fee for issuing or renewing a certificate of operation was \$35 for any type of elevator, moving walk, or escalator (sec. 4105.17(A)). Under the act, the fees are matched to the type of device being inspected. The fee for an elevator that is inspected every six months is increased to \$105 plus \$10 per floor for each floor where the elevator stops, except in the case where the elevator has been inspected by a special inspector in association with an insurance company, the only fee charged is the fee for the certificate of operation (\$105). (Sec. 4105.17(C).) While the fee for a certificate of operation is increased under the act from \$35 to \$105 plus per floor fees, this increase combined with the removal of fees tied directly to the inspection process, other than inspections for new elevators, appears to reflect no net change in the amount of fees charged to an owner. For example, the total sum of fees charged under current law are: \$30 per inspection charged two times per year (plus per floor fees), \$35 for a certificate of operation charged one time per year, and \$10 for a filing fee, resulting in \$105 plus per floor fees (sec. 4105.17(A) and (B)). The act adds that the fee for issuing or renewing a certificate of operation for an elevator that is inspected every 12 months is \$55 plus \$10 per floor for each floor where the elevator stops, except in the case where the elevator has been inspected by a special inspector in association with an insurance company, the only fee charged is the fee for the certificate of operation (\$55). (Sec. 4105.17(D).) The act also adds that the fee for issuing or renewing a certificate of operation for an escalator or moving walk is \$300, except in the case where the elevator has been inspected by a special inspector in association with an insurance company, the only fee charged is the fee for the certificate of operation (\$300). (Sec. 4105.17(E).)

Prior law conferred the authority to prescribe other fees for any other types of examinations or services performed by the Division of Industrial Compliance upon the Board of Building Standards. The Board of Building Standards also had the authority to raise inspection fees by not more than 50% of the amount listed in statute. Under the act the authority to do both is transferred to the Director of Commerce (sec. 4105.17(F)).

The act adds a special definition of "escalator" and "moving walk" to the section of the act related to fees. "Escalator" means a power driven, inclined, continuous stairway used for raising or lowering passengers and "moving walk" means a passenger carrying device on which passengers stand or walk, with a passenger carrying surface that is uninterrupted and remains parallel to its direction of motion. (Sec. 4105.17(J).)

Definitions

The previous definition of an "elevator" was clarified to include only those elevators that are in buildings subject to Ohio building code laws (essentially industrial buildings, see section 3781.06, not in the act). Also, moving walks are added in the definition of an elevator.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-31-01	p. 1074
Reported, H. Commerce & Labor	02-27-02	p. 1471
Passed House (94-0)	03-13-02	p. 1523
Reported, S. Insurance, Commerce, & Labor	04-24-02	p. 1705
Passed Senate (32-0)	04-24-02	p. 1710
Concurrence	04-24-02	p. 1723

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