ENGROSSED SENATE
BILL NO. 200 By: Justice of the Senate

and

Osborn of the House

An Act relating to the Department of Labor; amending 40 O.S. 2011, Sections 141.13 and 141.16, as amended by Section 1, Chapter 336, O.S.L. 2014 (40 O.S. Supp. 2015, Section 141.16), which relate to the Boiler and Pressure Vessel Safety Act; allowing inspections of certain boilers be performed by licensed boiler operators or licensed plumbing contractors; authorizing promulgation of rules establishing certain fees; providing for certain fees to be superseded by certain rules; deleting certain requirement to transfer fees to the General Revenue Fund; providing exception to certain deposit of fees; setting amount to transfer to General Revenue Fund; requiring licensure to elevator inspector; setting qualifications for licensure by rule; requiring demonstration of certain standards; providing for certificate of operation fee; directing inspection of newly installed elevators; requiring certain report of code compliance; requiring certain inspectors to submit certain insurance policy; stating minimum amount of coverage; providing enforcement by the Department of Labor; allowing inspection by written request; allowing Commissioner of Labor to determine reasonable grounds for inspection; construing responsibility and liability for damages; exempting state from certain responsibility and liability; requiring inspection of new elevators by licensed inspector; directing written inspection report; allowing correction of violations within certain time; requiring certain tests be performed; directing certain tests be performed by licensed elevator mechanic; amending 59 O.S. 2011, Sections 3023 and 3024, as amended by Section 293, Chapter 304, O.S.L. 2012 (59 O.S. Supp. 2015, Section 3024), which relate to the Elevator Inspection Bureau and powers of the Commissioner of Labor; requiring certain inspections be performed by Commissioner of Labor; deleting chief

elevator inspector; directing certain inspections be performed by licensed third party or inspector of a liability insurance company; authorizing promulgation of rules for certain administrative fines and fees; creating the Department of Labor Administrative Penalty Revolving Fund; providing for deposits and transfer of funds to the General Revenue Fund at certain time; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 40 O.S. 2011, Section 141.13, is amended to read as follows:

Section 141.13. A. The Commissioner of Labor or the chief boiler inspector, or any deputy inspector, shall have free access, during reasonable hours, to any premises in the state where a boiler or pressure vessel is being constructed for use in, or is being installed in this state for the purpose of ascertaining whether such boiler or pressure vessel is being constructed and installed in accordance with the provisions of the Boiler and Pressure Vessel Safety Act.

B. Each boiler and pressure vessel covered by the Boiler and Pressure Vessel Safety Act shall be thoroughly inspected as to its construction, installation and condition as follows:

1. Power boilers and high pressure high temperature water boilers shall receive an inspection annually which shall be an internal inspection where construction permits; otherwise it shall

be as complete an inspection as possible. Such boilers shall also be externally inspected annually preferably while under pressure;

2. Low pressure steam or vapor heating boilers shall receive an external inspection annually with an internal inspection at least every two (2) years where construction permits;

3. Hot water heating and hot water supply boilers shall receive an external inspection annually with an internal inspection at the discretion of the inspector;

4. Pressure vessels, excluding those within the scope of the American Petroleum Institute Pressure Vessel Inspection Code, subject to internal corrosion and waste heat steam generators shall receive an internal inspection triennially where construction permits. Pressure vessels not subject to internal corrosion shall receive an inspection at intervals set by the Commissioner. Frequency of external inspections of pressure vessels shall be set by the Commissioner;

5. A grace period of two (2) months beyond the periods specified in paragraphs 1, 2, 3 and 4 of this subsection is permitted between inspections; however, the inspection due date shall not be affected; provided, however, for an entity with two or more boilers or pressure vessels, the Commissioner may allow all inspections of the boilers or pressure vessels to be conducted at that location at the same time;

6. The Commissioner of Labor may provide for longer periods between inspections in the rules for specific boilers and pressure vessels; and

7. Under the provisions of the Boiler and Pressure Vessel Safety Act, the Commissioner of Labor is responsible to provide rules for the safety of life, limb and property and therefore has jurisdiction over the interpretation and application of the inspection requirements as provided for in the rules. Inspection during construction and installation shall certify as to the minimum requirement for safety as defined in the American Society of Mechanical Engineers Code or other construction standards acceptable to the Commissioner of Labor. Inspection requirements of operating equipment shall be in accordance with generally accepted practice and compatible with the actual service condition, such as:

a. previous experience, based on records of inspection, performance and maintenance,

b. location, with respect to personnel hazard,

c. quality of inspection and operating personnel,

d. provision for related safe operating controls, and

e. interrelation with other operations outside the scope of the Boiler and Pressure Vessel Safety Act.

Based upon the documentation of such actual service conditions by the owner or user of the operating equipment, the Commissioner of

Labor may, at his discretion, permit variations in the inspection requirements.

C. The inspections herein required shall be made by the Commissioner, chief boiler inspector, deputy inspector or a special inspector as provided for in the Boiler and Pressure Vessel Safety Act <u>except that hot water heating and hot water supply boilers may be inspected by licensed boiler operators or plumbing contractors licensed by the State of Oklahoma</u>.

D. Owner-user inspection of boilers and pressure vessels is permitted provided the owner-user inspection service is regularly established and is under the supervision of one or more individuals whose qualifications are satisfactory to the Commissioner of Labor and said owner-user causes the pressure vessels to be inspected in conformance with the National Board Inspection Code or American Petroleum Institute Pressure Vessel Inspection Code as applicable.

E. If, at the discretion of the inspector, a hydrostatic test shall be deemed necessary, it shall be made by the owner or user or his licensed representative and witnessed by an inspector as authorized by the Boiler and Pressure Vessel Safety Act, before a certificate of operation is issued.

F. All boilers, other than cast iron sectional boilers, and pressure vessels to be installed in this state after the twelve-month period from the date upon which the rules of the Commissioner become effective, shall be inspected during construction as required

by the applicable rules by an inspector authorized to inspect boilers and pressure vessels in this state, or if constructed outside of the state, by an inspector holding a valid commission issued by the National Board of Boiler and Pressure Vessel Inspectors.

G. No person, firm or corporation shall in any manner interfere with the performance of the official duties of any inspector authorized by the Boiler and Pressure Vessel Safety Act.

SECTION 2. AMENDATORY 40 O.S. 2011, Section 141.16, as amended by Section 1, Chapter 336, O.S.L. 2014 (40 O.S. Supp. 2015, Section 141.16), is amended to read as follows:

Section 141.16. A. <u>The Commissioner of Labor may promulgate rules establishing a schedule of administrative fees for the registration, inspection and operation of boilers, pressure vessels and steam lines. The following fees shall remain in effect until rules become effective, at which time the fees contained in this subsection shall be superseded by rule. Fees collected by the Department of Labor for the registration, inspection and operation of boilers, pressure vessels and steam lines shall be deposited as provided in subsection C of this section.</u>

1. a. Annual certificate of operation fee shall be as follows:

(1) with manway state inspector $75.00

(2) without manway state inspector $50.00

(3) any size special - or owner/user inspector $50.00

(4) each public hot water supply heater (biennially) $5.00

(5) each public boiler inspection/certification $25.00

b. Only one certificate of operation fee per year may be charged; except an additional fee equal to the certificate of operation fee may be charged for witnessing a hydrostatic test required after repairs, provided a fee equal to the total fees identified in division (1) or (2) of subparagraph a of this paragraph, whichever is appropriate, and subparagraph f of paragraph 2 of this subsection may be charged when the pressure-retaining item is not prepared and ready pursuant to rules promulgated by the Commissioner of Labor at the time of the inspection.

2. Other Fees

a. hydrostatic test of steam pipeline per day $150.00

(for each additional half-day or part thereof) $75.00

b. shop review fees $3,000.00

c. licensing fees

(1) repair, service, install (annually) $50.00

(2) boiler operator (biennially) $50.00

d. certificate of competency fee $15.00

e. examination fee $50.00

f. boiler or pressure vessel inspection fee for certificate inspections by state inspectors $155.00

g. authorized inspector services for weld repairs or alterations, per eight-hour day or part thereof $300.00

h. a fee as established by rule may be assessed for the issuance of duplicate licenses and certificates, not to exceed $10.00

B. All institutions owned or operated by the State of Oklahoma or its agencies or by any county, municipality or school district, and such institutions or agencies, and all owners or users of boilers or pressure vessels of historical significance as specified in subsection D of Section 141.5 of this title are exempt from the payment of only those fees provided for in paragraph 2 of subsection A of this section.

C. ~~1. Except for the revenue listed in paragraph 2 of this subsection, the Commissioner shall account for and transfer all fees~~

~~so received to the State Treasury to the credit of the General Revenue Fund, together with a detailed report of same.~~

~~2.~~ The Commissioner shall account for and deposit ~~all~~ fee revenue received ~~and listed in this paragraph~~ pursuant to this section to the credit of the Department of Labor Revolving Fund~~:~~ ,

~~a. Twenty-five Dollars ($25.00) of each certificate of operation fee collected under divisions (1), (2) and (3) of subparagraph a of paragraph 1 of subsection A of this section,~~

~~b. all fees listed in divisions (4) and (5) of subparagraph a of paragraph 1 of subsection A of this section, and~~

~~c. all fees listed in subparagraphs b, g and h of paragraph 2 of subsection A of this section~~

except Two Hundred Fifty-four Thousand Two Hundred Sixty-five Dollars ($254,265.00) of the fee revenue received each fiscal year shall be transferred to the State Treasury to the credit of the General Revenue Fund.

D. All fees shall be paid directly to the Department of Labor.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3023.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Any person, sole proprietor, partnership, firm, joint venture, association, corporation or any other business entity

wishing to engage in the business of elevator, escalator, moving walk or platform or stairway chairlift inspections within the jurisdiction of this state shall make application for a license with the Department of Labor on a form to be provided by the Department. An inspector shall possess those qualifications established by rule of the Department of Labor.

B. No inspector's license shall be granted to any person unless he or she demonstrates to the satisfaction of the Commissioner of Labor that he or she meets the current ASME QEI-1, Standards for the Qualifications of Elevator Inspectors.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3023.2 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. The certificate of operation fee for newly installed elevators, platform lifts, and stairway chairlifts for private residences shall be subsequent to an inspection by the Commissioner or his or her designee.

B. The Commissioner, or his or her designee, shall inspect, in accordance with the requirements set forth in this chapter, all newly installed elevators, platform lifts, and stairway chairlifts for private residences. For newly installed residential elevators and other residential elevators, the inspector shall note on the inspection report compliance with the applicable codes governing protection of hoist way openings, commonly known as the 3x5 rule.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3023.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

Elevator inspectors, not employed by the authority having jurisdiction, shall submit to the Department of Labor an insurance policy, or certified copy thereof, issued by an insurance company authorized to do business in the state to provide general liability coverage of at least One Million Dollars ($1,000,000.00) for injury or death of any number of persons in any one occurrence and with coverage of at least Five Hundred Thousand Dollars ($500,000.00) for property damage in any one occurrence and the statutory workers' compensation insurance coverage.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3023.4 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. It shall be the duty of the Department of Labor to develop an enforcement program which will ensure compliance with regulations and requirements referenced in this chapter. An enforcement program may include, but is not limited to, regulations for identification of property locations which are subject to the regulations and requirements; issuing notifications to violating property owners or operators; random on-site inspections and tests on existing installations; witnessing periodic inspections and testing in order to ensure satisfactory performance by licensed persons, sole

proprietors, firms or corporations; and assisting in the development of public awareness programs.

B. Any person may request an investigation into an alleged violation of this chapter by giving notice to the Department of Labor of such violation or danger. The notice shall be in writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the person making the request.

C. Upon receipt of a notification, if the Commissioner determines that there are reasonable grounds to believe that a violation or danger exists, the Commissioner shall cause to be made an investigation in accordance with this chapter as soon as practicable to determine if such violation or danger exists. If the Commissioner determines that there are no reasonable grounds to believe that a violation or danger exists, the Department of Labor shall notify the party in writing of such determination.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3023.5 of Title 59, unless there is created a duplication in numbering, reads as follows:

This chapter shall not be construed to relieve or lessen the responsibility or liability of any person, firm or corporation owning, operating, controlling, maintaining, erecting, constructing, installing, altering, inspecting, testing or repairing any elevator or other related mechanism covered by this chapter for damages to person or property caused by any defect therein, nor does the state

assume any such liability or responsibility therefor or any liability to any person for whatever reason whatsoever by the enactment of this chapter or any acts or omissions arising hereunder.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3023.6 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. Initial inspections shall be conducted by the Commissioner or his or her designee. It shall be the responsibility of the owners of all new and existing conveyances located in any building or structure to have the conveyances inspected annually (ASME A17.1, category one) by a licensed elevator inspector. Subsequent to inspection, the licensed elevator inspector shall supply the property owner or lessee and the Commissioner with a written inspection report describing any and all violations. Property owners shall have thirty (30) days from the date of the published inspection report to be in full compliance with correcting the violations.

B. It shall be the responsibility of the owners of conveyances to have a licensed elevator inspector, as described in this chapter, ensure that the required tests are performed at intervals in compliance with ASME A17.1, ASME A18.1 and ASCE 21.

C. All tests shall be performed by a licensed elevator mechanic.

SECTION 9. AMENDATORY 59 O.S. 2011, Section 3023, is amended to read as follows:

Section 3023. A. There is hereby established an Elevator Inspection Bureau in the Department of Labor under the direction of the chief elevator inspector, who shall be responsible to the Commissioner of Labor or a duly authorized representative for the supervision, inspection, alteration, installation, testing, and maintenance of elevators and other such devices within the definitions of the Elevator Safety Act.

The Elevator Inspection Bureau shall be furnished with sufficient personnel, deputy inspectors, and clerical aids to perform the assigned duties within the limits prescribed by the Commissioner of Labor.

The chief elevator inspector and deputy inspectors, under the supervision of the Commissioner of Labor, shall:

1. Take action necessary for the enforcement of the Elevator Safety Act and these rules;

2. Make available upon request copies of the rules promulgated by the agency; and

3. Issue, suspend~~,~~ or revoke for cause certificates, licenses, and registrations as may be issued by the provisions of the Elevator Safety Act, and administer other disciplinary actions as prescribed in rules as promulgated by the Commissioner of Labor.

B. The Commissioner of Labor is authorized to adopt and promulgate rules pursuant to the Administrative Procedures Act. Definitions, rules, and regulations so adopted shall be based upon and follow generally accepted national engineering standards, formula, and practices. The Commissioner of Labor may adopt an existing American national standard known as the Safety Code for Elevators and Escalators of the American Society of Mechanical Engineers ("ASME").

C. Under the provisions of the Elevator Safety Act, the Commissioner of Labor is responsible to provide rules for the safety of life, limb, and property and therefore has jurisdiction over the interpretation and application of the inspection requirements as provided for in the rules. Inspection during construction and installation shall certify as to the minimum requirements for safety as defined in the American Society of Mechanical Engineers Code or other construction standards acceptable to the Commissioner of Labor. Inspection requirements of operating equipment shall be in accordance with generally accepted practice and compatible with the actual service conditions such as:

1. History of previous experience, previous records of inspection, performance, and maintenance;

2. Location, with respect to personnel hazard;

3. Quality of inspection and operating personnel;

4. Provisions for related safe operating controls; and

5. Interrelation with other operations outside the scope of the Elevator Safety Act.

D. Inspections required by the Elevator Safety Act shall be conducted by inspectors licensed by the Department of Labor.

E. Inspections conducted for the issuance of a certificate of operation ~~may~~ shall be performed by~~:~~ the Commissioner or his or her designee.

~~1. The chief elevator inspector, deputy elevator inspector or licensed third party inspector who at the time of inspection possesses a valid elevator inspector's license issued by the Department of Labor; or~~

~~2. An elevator inspector employed by the liability insurance company of record of the owner of the elevator or device who at the time of inspection is in possession of a valid elevator inspector's license issued by the Department of Labor.~~

F. Periodic inspections shall be performed by:

1. A licensed third party inspector who at the time of inspection possesses a valid elevator inspector's license issued by the Department of Labor;

2. An elevator inspector employed by the liability insurance company of record of the owner of the elevator or device who at the time of inspection is in possession of a valid elevator inspector's license issued by the Department of Labor; or

3. An elevator inspector employed by the Department of Labor.

G. Elevator Inspectors, not employed by the Department of Labor, shall submit to the Commissioner of Labor, an insurance policy or certified copy thereof, issued by an insurance company authorized to do business in this state to provide general liability coverage of a least One Million Dollars ($1,000,000.00) for injury or death of any number of persons in any one occurrence, with the coverage of at least Five Hundred Thousand Dollars ($500,000.00) for property damage in any one occurrence and proof of workers' compensation coverage.

~~G.~~ H. Elevators, escalators, and other such devices within the definitions of the Elevator Safety Act shall receive an inspection for the purpose of obtaining a certificate of operation:

1. Two-floor to four-floor elevator units, not to exceed two (2) years;

2. Any wire-rope elevator, regardless of floors, annually;

3. Escalators and moving walkways, annually;

4. Wheelchair lifts, triennially;

5. Temporary elevators shall be inspected at each erection and every ninety (90) days or as the code requires; and

6. Any elevator or other such device subject to the provisions of the Elevator Safety Act located in a structure whose occupants are mobility restricted, such as hospitals, nursing homes, and residential care facilities, shall be inspected annually.

SECTION 10. AMENDATORY 59 O.S. 2011, Section 3024, as amended by Section 293, Chapter 304, O.S.L. 2012 (59 O.S. Supp. 2015, Section 3024), is amended to read as follows:

Section 3024. A. The Commissioner of Labor shall have the following powers and duties:

1. The Commissioner shall:

a. adopt or determine standards of elevator safety,

b. license elevator contractors, elevator mechanics, and elevator inspectors,

c. register elevator apprentices,

d. determine qualifications for examination, establish application processes, and examine applicants for licensure,

e. establish terms of licensure and renewal procedures,

f. attempt to achieve reciprocity agreements whereby licenses issued by other jurisdictions may be accepted in this state in lieu of examination,

g. establish grounds for revocation, suspension, and nonrenewal of licenses and policies for reinstatement of licenses and for imposition of lesser disciplinary measures,

h. establish continuing education requirements,

i. provide for the inspection and certification of elevators,

j. provide for the enforcement of the Elevator Safety Act,

k. hear appeals pursuant to the Administrative Procedures Act,

l. establish a procedure for the reporting and investigation of accidents, and

m. establish a procedure to allow variances from the literal requirement of the code;

2. The Commissioner shall publish informational brochures about license examinations that indicate the scope of the examinations, include suggestions about how to prepare for the examinations, and may include sample questions of the type to be expected, but shall never include test items that will be used in future examinations. In no case shall information about forthcoming examinations, that is not generally available, be given to any school, coaching service, or individual privately; and

3. The Commissioner shall have subpoena powers and shall have the right to seek injunctive relief to prevent the operation of elevators lacking a certificate of operation after November 1, 2006, or failing inspection. For any violation of the Elevator Safety Act, the Commissioner may assess an administrative fine ~~of not more than Five Hundred Dollars ($500.00)~~, which fine may be assessed in addition to any other penalties provided pursuant to the Elevator Safety Act. <u>The Commissioner of Labor may promulgate rules</u>

establishing a schedule of administrative fines for violations of the Elevator Safety Act. Upon collection of an assessed fine, the funds shall be deposited in the Department of Labor Administrative Penalty Revolving Fund created in Section 11 of this act.

B. The Commissioner of Labor may promulgate rules establishing a schedule of administrative fees for the implementation of the Elevator Safety Act. The following fees shall remain in effect until such rules become effective, at which time the fees contained in this subsection shall be superseded by rule. Fees shall be as follows:

1. Elevator contractor examination	$100.00
2. Elevator inspector examination	$100.00
3. Elevator mechanic examination	$100.00
4. Initial and renewal elevator contractor license	$100.00
5. Initial and renewal elevator inspector License	$ 75.00
6. Initial and renewal elevator mechanic License	$ 50.00
7. Annual elevator apprentice registration	$ 25.00
8. Late renewal - in addition to license fee	$ 10.00

9. Replacement of lost or mutilated license $ 10.00

10. Reinstatement - in addition to license fee $100.00

11. Existing elevator - certification of operation $ 25.00

12. New elevator - inspection and certification $150.00

13. Elevator temporary certification $ 25.00

14. Elevator temporary mechanic license for 30 days $ 10.00

15. Labor for chief elevator inspector or deputy elevator inspector to perform inspection for issuance of certificate of operation:

a. any escalator or moving walkway $125.00

b. elevator, two-four floors $ 75.00

c. elevator, five-ten floors $100.00

d. elevator, eleven floors and over $125.00

e. wheelchair lift $ 25.00

C. All revenues received shall be deposited to the Department of Labor Revolving Fund. It is the intent of the Legislature that fees charged pursuant to the Elevator Safety Act be adjusted to provide sufficient income, but not substantially more than

sufficient income, to ensure elevator safety as provided by the Elevator Safety Act. Accordingly, the Commissioner of Labor shall make an annual study of the revenues to and expenditures from the Department of Labor Revolving Fund related to elevator safety and shall prepare a report indicating what fee adjustments, if any, shall be recommended. The report shall be submitted by September 1 each year to the Director of the Office of Management and Enterprise Services, the Chair of the Appropriations Committee of the Senate, and the Chair of the Appropriations and Budget Committee of the House of Representatives, and shall be filed with the Department of Labor.

D. Licenses and certifications issued in accordance with the provisions of the Elevator Safety Act shall be renewed according to the following schedule:

1. Elevator contractor, elevator inspector, elevator mechanic licenses and elevator apprentice registration shall be renewed annually prior to the last day of the calendar month in which the license or registration was initially issued;

2. Any such license, registration or certificate required by the Elevator Safety Act not renewed by the last day of the calendar month in which renewal is required shall be subject to a late fee as provided by this act;

3. Any elevator contractor, elevator inspector, elevator mechanic license or apprentice registration having been expired for

a period of not less than thirty (30) days nor more than three hundred sixty-five (365) days shall be subject to a reinstatement fee as provided for in the Elevator Safety Act; and

4. Any elevator contractor, elevator inspector, elevator mechanic license or apprentice registration being expired for a period of one (1) year or longer from the last day of the month in which renewal was required shall be considered void and the licensee shall be subject to all requirements for new issuance.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 405.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Department of Labor to be designated the "Department of Labor Administrative Penalty Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all administrative fines collected by the Department for violations of the Elevator Safety Act, and any rules promulgated thereto. All monies accruing to the credit of the fund are hereby directed to be transferred by the Commissioner of Labor to the State Treasurer for deposit and credit to the General Revenue Fund at the end of each fiscal year.

SECTION 12. This act shall become effective November 1, 2016.

Passed the Senate the 8th day of March, 2016.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2016.

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Presiding Officer of the House of Representatives