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# A BILL FOR AN ACT

RELATING TO THE HAWAII OCCUPATIONAL SAFETY AND HEALTH LAW.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 396-3, Hawaii Revised Statutes, is  
2 amended by repealing the definitions of "hoisting machine" and  
3 "hoisting machine operator".

4 [~~"Hoisting machine" means a machine with a hoist line,~~  
5 ~~sling, or hydraulic lifting mechanism used in construction,~~  
6 ~~demolition, or excavation work.~~

7 ~~"Hoisting machine operator" means any individual who~~  
8 ~~operates a hoisting machine in the State."]~~

9 SECTION 2. Section 396-4, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) Administration. The department shall be responsible  
12 for administering occupational safety and health standards  
13 throughout the State.

14 (1) The department shall prescribe and enforce rules under  
15 chapter 91 as may be necessary for carrying out the  
16 purposes and provisions of this chapter. The  
17 department shall make reports to the United States



1 Secretary of Labor in the form and containing the  
2 information that the Secretary from time to time shall  
3 require pursuant to federal law;

4 (2) The department shall adopt, amend, or repeal  
5 occupational safety and health standards in the manner  
6 prescribed by rules adopted hereunder. Emergency  
7 temporary standards may be adopted without conforming  
8 to chapter 91 and without hearings to take immediate  
9 effect upon giving a statewide public notice of the  
10 emergency temporary standard or upon any other date  
11 that may be specified in the notice. An emergency  
12 temporary standard may be adopted if the director  
13 determines:

14 (A) That employees are exposed to grave danger from  
15 exposure to substances or agents determined to be  
16 toxic or physically harmful or from new hazards;  
17 and

18 (B) That the emergency temporary standard is  
19 necessary to protect employees from danger.

20 The emergency temporary standard shall be effective  
21 until superseded by a standard adopted in accordance



1 with the procedures set forth in chapter 91, but in  
2 any case shall be effective no longer than six months;  
3 (3) Variances from occupational safety and health  
4 standards adopted under this chapter may be granted  
5 upon application of an employer or employers.  
6 Application for variances [~~must~~] shall correspond to  
7 procedures set forth in the rules of this chapter.  
8 The director may issue an order for variance if the  
9 director determines that the proponent of the variance  
10 has demonstrated that the conditions, practices,  
11 means, methods, operations, or processes used or  
12 proposed to be used by the employer will provide  
13 employment and places of employment to the employer's  
14 employees [~~which~~] that are as safe and healthful as  
15 those [~~which~~] that would prevail if the employer  
16 complied with the standard. The employer shall also  
17 notify the employer's employees upon each application  
18 for variance and the employees shall be given an  
19 opportunity to request and participate in hearings or  
20 other proceedings relating to applications for  
21 variance. No inference of admission of violation of a



1 standard shall be made against the employer by reason  
2 of the employer's application for variance; and

3 (4) The department, upon the application of any employer  
4 or other person affected thereby, may grant any time  
5 that may reasonably be necessary for compliance with  
6 any order. Any person affected by an order may  
7 petition the department for an extension of time,  
8 which may be granted if the department finds it  
9 necessary [~~and~~

10 ~~(5) The department shall regulate hoisting machines and~~  
11 ~~shall certify their operators]."~~

12 SECTION 3. Section 396-8, Hawaii Revised Statutes, is  
13 amended by amending subsection (e) to read as follows:

14 "(e) Discharge or discrimination against employees for  
15 exercising any right under this chapter is prohibited. In  
16 consideration of this prohibition:

17 (1) No person shall discharge, suspend or otherwise  
18 discriminate in terms and conditions of employment  
19 against any employee by reason of:



- 1 (A) The employee's failure or refusal to operate or  
2 handle any machine, device, apparatus, or  
3 equipment which is in any unsafe condition; or  
4 (B) The employee's failure or refusal to engage in  
5 unsafe practices in violation of this chapter or  
6 of any standard, rule, regulation, citation or  
7 order issued under the authority of this chapter;
- 8 (2) Upon discretion of the director or request, names of  
9 complainants may be withheld from the employer;
- 10 (3) No person shall discharge or in any manner  
11 discriminate against any employee because the employee  
12 has filed any complaint or instituted or caused to be  
13 instituted any proceeding under or related to this  
14 chapter, or has testified or intends to testify in any  
15 [~~such~~] proceeding, or is acting to exercise or has  
16 exercised on behalf of the employee or others any  
17 right afforded by this chapter;
- 18 (4) Any employee who believes that there has been a  
19 discharge or discrimination against the employee by  
20 any person in violation of this subsection may, within  
21 sixty days after the violation occurs, file a



1 complaint with the director alleging unlawful  
2 discharge or discrimination and setting forth the  
3 circumstances thereof;

4 (5) Upon receipt of the complaint, the director shall  
5 investigate to determine if a discharge or  
6 discrimination in violation of this subsection has  
7 occurred;

8 (6) If upon investigation the director determines that the  
9 provisions of this subsection have been violated, the  
10 director shall order the employer to provide all  
11 appropriate relief to the employee, including rehiring  
12 or reinstating the employee to the former position  
13 with back pay and restoration of seniority;

14 (7) Within ninety days of receipt of a complaint filed  
15 under this subsection, [~~unless extended by the~~  
16 ~~director,~~] the director shall notify the employee of  
17 the final determination and any subsequent action the  
18 department will take to resolve the complaint[+] unless the investigation cannot be completed within  
19 that period, in which case up to ninety additional  
20 days shall be allowed without notice. Any further



1           extension may be granted by the director with notice  
2           to the employee of the additional time required and  
3           the expected date of the final determination; and

4           (8) Nothing in this subsection shall preclude any employee  
5           or representative of an employee from simultaneously  
6           pursuing a cause of action for injunctive relief or  
7           any other remedy provided by law."

8           SECTION 4. Section 396-19, Hawaii Revised Statutes, is  
9           repealed.

10           ~~["§396-19 Hoisting machine operators advisory board. (a)~~  
11           ~~There is created a hoisting machine operators advisory board,~~  
12           ~~which shall be placed in the department for administrative~~  
13           ~~purposes, to be composed of five members to serve without~~  
14           ~~compensation and without reimbursement for expenses. Members~~  
15           ~~shall be appointed by the governor under section 26-34.~~

16           ~~The board shall adopt rules pursuant to chapter 91 for the~~  
17           ~~certification of hoisting machine operators.~~

18           ~~(b) The hoisting machine operators advisory board may~~  
19           ~~employ a 0.5 full-time equivalent office assistant, without~~  
20           ~~regard to chapters 76 and 89 and may dismiss such person as it~~  
21           ~~finds necessary for the performance of its function and duties.~~

1 ~~The board shall have the authority to fix the office assistant's~~  
2 ~~compensation." ]~~

3 SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect July 1, 3000.



**Report Title:**

Department of Labor and Industrial Relations; Occupational Safety and Health Administration; Complaints; Determinations; Hoisting Machine Operators Advisory Board

**Description:**

Repeals the requirement that the Department of Labor and Industrial Relations regulate hoisting machines and certify their operators and the Hoisting Machine Operators Advisory Board, including its rules requiring a separate state crane operator certificate. Allows additional time for the Director of Labor and Industrial Relations to complete an investigation of a discharge or discrimination complaint pertaining to employees exercising rights under the Occupational Safety and Health Law without formal extension. Effective 7/1/3000. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

