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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 396-8, Hawaii Revised Statutes, is  
10 amended by amending subsection (e) to read as follows:

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

14 (1) No person shall discharge, suspend or otherwise  
15 discriminate in terms and conditions of employment  
16 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 acting to exercise or exercised on  
16 behalf of the employee or others any right afforded by  
17 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  
21



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 Statutory material to be repealed is bracketed  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

5 SECTION 5. This Act shall take effect January 1, 2077.



**Report Title:**

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

**Description:**

Repeals the Hoisting Machine Operators Advisory Board and 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 1/1/2077. (SD1)

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

