

A Bill for an Act to Establish the Hawaii Occupational Safety and Health Law.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

**“CHAPTER
OCCUPATIONAL SAFETY AND HEALTH LAW**

“§ -1 **Short title.** This chapter shall be known as the Hawaii Occupational Safety and Health Law.

§ -2 **Findings and purpose.** Through years of research and study, Congress has found that the number of industrial accidents that take place in the United States can be reduced if certain minimum standards are established and enforced.

Congress has also found that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments. The overall congressional findings would definitely be applicable to Hawaii. There is a need to assure so far as possible, every working man and woman in the State safe and healthful working conditions. This legislation is also designed to permit and encourage employer and employee efforts to reduce injury and disease arising out of employment, and to stimulate them to institute new programs and to perfect existing programs for providing safe and healthful working conditions.

“§ -3 **Definitions.** When used in this chapter:

‘Department’ means the department of labor and industrial relations.

‘Director’ means the director of labor and industrial relations.

‘Appeals Board’ means the labor and industrial relations appeals board.

‘Employer’ means:

- (1) The State and every state agency;
- (2) Each county and all public and quasi-public corporations and public agencies therein;
- (3) Every person which has any natural person in service;
- (4) The legal representative of any deceased employer;
- (5) Every person having direction, management, control, or custody of any employment, place of employment, or any employee.

‘Employee’ means every natural person who is required or directed by any employer to engage in any employment, or to go to work or be at any time in any place of employment for which he is paid compensation.

‘Place of employment’ means any place, and the premises appurtenant

thereto, where employment is carried on, except a place the safety jurisdiction over which is vested by law in any federal agency.

'Employment' includes the carrying on of any trade, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged to work for hire except domestic service in or about a private home.

'Safe' and 'safety' as applied to an employment or place of employment mean such freedom from danger to employees as the nature of the employment reasonably permits.

'Safety device' and 'safeguard' shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.

'Manufacturer' means, for the purpose of the section concerning explosives, any person who is engaged in the manufacture of explosives or who otherwise produces any explosive;

'Occupational Safety and Health Standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

'Dealer' means, for the purpose of the section concerning explosives, any person, not a manufacturer, engaged in the business of buying and selling explosives.

§ -4 Powers and duties of department.

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

(1) The department shall prescribe and enforce rules and regulations under chapter 91 as may be necessary for carrying out the purposes and provisions of this chapter.

(2) Emergency temporary standards may be promulgated without conforming to chapter 91, without hearings or publication by the department by giving three days written notice for compliance for the protection of employees against new hazards unforeseen by this chapter. Said emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures set forth in chapter 91, but in any case shall be effective no longer than six months;

(3) Variances from occupational safety and health standards promulgated under this chapter may be granted upon application of an employer or employers. Application for variances must correspond to procedures set forth in the rules and regulations of this chapter. The employer shall also notify his employees upon each application for variance and said employees shall be given an opportunity to request and participate in hearings or other proceedings relating to applications for variance. No inference of admission of violation of a standard shall be made against the employer by reason of his application for variance;

(4) The department may, upon the application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order. Any person affected by an order may petition the department for an extension of time, which may be granted if the department finds it necessary.

(b) Inspection and investigation.

(1) Authorized representatives of the director shall have the right to enter without delay any place of employment during regular working hours and at other reasonable times;

(2) The department shall inspect places of employment and machines, devices, apparatus, and equipment for the purpose of insuring adequate protection to the life, safety and health of workers;

(3) The department shall inspect construction activities for the purpose of protecting the health and safety of employees and the general public. A construction activity includes any activity related to the erection, construction, alteration, demolition or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and any other construction project or facility;

(4) The department shall inspect, at least semiannually, all mechanically or electrically operated devices considered as major rides and used as amusement rides at a carnival, circus, fair, or amusement park for the purpose of protecting the safety of the general public. This section shall not apply to any coin operated ride or mechanically or electrically operated devices considered or known in the amusement trade as kiddie rides;

(5) The department may investigate the cause of all industrial injuries resulting in disability or death which occur in any employment, or place of employment, and may make reasonable orders and recommendations with respect to the cause of the injuries;

(6) The department shall have the right to question privately any such employer, owner, operator, agent or employee in investigation, enforcement and inspection activities;

(7) There shall be a prohibition against advance notice of inspection except that written exception may be expressly authorized by the director in his discretion and pursuant to the rules and regulations promulgated under this chapter. Those inspections requiring advance notice for preparation or for other purposes of inspection as further defined in the rules and regulations promulgated under this chapter shall not be included in the prohibition against advance notice.

(c) Education and training.

(1) The department may disseminate through exhibitions, moving pictures, lectures, pamphlets, and any other method of publicity, information to employers, employees and the general public regarding the causes and prevention of industrial accidents and injuries.

- (2) Where appropriate, the department shall undertake programs in training and consultation with employers and employees as a means of encouraging voluntary compliance.
- (d) Enforcement.
 - (1) Whenever right of entry or inspection is refused to an authorized representative of the director, the department may apply to the circuit court of the circuit where such place of employment exists for a search warrant providing on its face that the willful interference with its lawful execution may be punished as a contempt of court.
 - (2) Whenever the department finds that any employment or place of employment or the operation of any machine, device, apparatus, or equipment is not safe, or that any practice, means, method, operation, or process employed or used in connection therewith is unsafe or does not afford adequate protection to the life, safety and health of employees in the employment, the department may make an order relative thereto which is necessary to render the employment or place of employment safe and protect the life and safety of employees therein and deliver the same to the employer. The department may in the order direct that, in the manner and within a time specified, such additions, repair, improvements, or changes be made and such safety devices and safeguards be furnished, provided and used as are reasonably required to render the employment or place of employment safe. The employer shall obey and observe all safety orders and post said orders in a prominent place;
 - (3) Whenever in the opinion of the department the condition of any employment or place of employment, or the operation of any machine, device, apparatus, or equipment, or any practice, means, method, operation, or process employed or used, is in an unsafe condition or is not properly guarded or dangerously placed, the use thereof shall be prohibited by the department, and an order to that effect shall be posted prominently in the working place. The order shall be removed: (A) when a determination has been made by the department that the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety devices are provided for; and (B) by an authorized representative of the department.
 - (4) Whenever in the opinion of the department the condition of any employment or place of employment, or the operation of any machine, device, apparatus, or equipment, or any practice, means, method, operation, or process employed or used constitutes an imminent hazard to the life or safety of any person, the department may apply to the circuit court of the circuit in which such place of employment, machine, device, apparatus, or equipment is situated or such practice, means, method, operation, or process is employed for an injunction restraining the use or operation thereof until the use or operation is made safe.

The application to the circuit court accompanied by an affidavit showing that the use or operation exists in violation of an order of the department and constitutes an imminent hazard to the life or safety of any employee, and accompanied by a copy of the order applicable thereto, shall warrant, in the discretion of the court, the immediate granting of a temporary restraining order. No bond shall be required from the department as a prerequisite to the granting of a restraining order.

(5) (A) In addition to any other power and authority of the department under this chapter, the director or his authorized subordinate may arrest any person for violation of this chapter or any rule or regulation promulgated pursuant to this chapter. Upon arresting any person for the violation, the director or his authorized subordinate shall take the name and address of the person and shall issue to him a summons or citation, printed in the form hereinafter described, directing him to appear and answer to the charge against him at a certain place and at a time within seven days after the arrest.

(B) There shall be a form of summons or citation for use in citing violators of this chapter or rules or regulations promulgated thereunder which does not require the physical arrest of the violators. The summons or citation shall be printed in a form commensurate with the form of other summonses or citations used in modern methods of arrest, and shall be so designed to include all necessary information to make the same valid and legal. The form and content of the summons or citation shall be as adopted or prescribed by the district court.

In every case when a summons or citation is issued the original shall be given to the violator; provided that the district court may prescribe the issuance to the violator of a carbon copy of the summons or citation and provide for the disposition of the original and any other copies.

Every summons or citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

(C) If any person fails to comply with a summons or citation given on him or fails or refuses to deposit bail as required and within the time permitted, the department shall cause a complaint to be entered against the person and secure the issuance of a warrant for his arrest.

(6) The director and his authorized agents shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of documentary evidence, and examining or causing to be examined witnesses as are possessed by a court, and may take depositions and certify to official acts. The circuit court of any circuit upon application by the director shall have power to enforce by proper proceedings the attendance and testimony of any witness so subpoenaed. Subpoena and witness fees and

mileage in such cases shall be the same as in criminal cases in the circuit courts. Necessary expenses of or in connection with any such hearings or investigations shall be payable from the funds appropriated for expenses of administration of the department.

No person shall be excused from attending or testifying or producing material, books, paper, correspondence, memoranda, and other records before the director or in obedience to subpoena on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary, or otherwise, except that such individuals so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

- (7) Where a condition or practice in a place of employment could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to:
- (A) immediately inform the employees and employers of such hazard by meeting, posted notice, or otherwise;
 - (B) take steps to obtain immediate abatement of the hazard by the employer and where appropriate to initiate necessary legal proceedings to require such abatement.

§ -5 Fees. The director may prescribe reasonable fees to be charged for permits, certificates, or licenses, the issuance of which are required by this chapter or by any rule or regulation of the department, and for:

- (1) Inspection by the department of elevators, personnel hoists, man-lifts, aerial tramways, boilers, nuclear vessels, and unfired pressure vessels;
- (2) Inspection by the department of any machine, device, apparatus, or equipment for which a permit or certificate is required for its operation or use and which is required for its operation or use and which is required to be inspected by this chapter or by any rule or regulation of the department;
- (3) Examination of any person applying for permits, certificates, or licenses as required by this chapter or by any rule or regulation of the department.

All fees received by the department pursuant to this section shall be paid into the general fund of the State.

“§ -6 Employer responsibility. (a) Safe place of employment; safety devices and safeguards.

- (1) Every employer shall furnish employment and a place of employment which are safe for the employees therein as well as free from recognized hazards. No employer shall require or permit any employee to go or be in any employment or place of employment which

is not free from recognized hazards that are causing or likely to cause death or serious physical harm to employees or which does not comply with occupational safety and health standards promulgated under this chapter except for the specific purpose of abating said hazard.

- (2) Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe.
- (3) No employer, owner, or lessee of any real property shall construct or cause to be constructed any place of employment that is not safe, and no employer shall occupy or maintain any unsafe place of employment.
- (4) Nothing in this chapter shall prevent the Secretary of Labor from requiring reports from employers under PL 91596 Section 8(c).
- (5) Each employer shall make, keep and preserve and make available to the department such records regarding his activities relating to this chapter as the department may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses.
The department shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on work related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.
- (6) All employers shall be required to post prominently in the working place all posters and information provided by the department for posting as well as notices informing employees of their rights and obligations under this chapter.

“§ -7 Toxic materials. (a) The department shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured as prescribed under the rules and regulations.

(b) All employers shall prominently post information regarding hazards in his workplace including information about suitable precautions, relevant symptoms, and emergency treatment in case of exposure, and where appropriate, medical examination at no cost to employees with the results of such medical examinations being furnished only to appropriate state officials, and if the employee so requests, to his own physician. Where possible, said information shall additionally be posted or labeled on or near said hazard. Where suitable protective equipment is available, all employers shall provide information concerning their availability and use to the affected employees including control or technological procedures with respect to such hazards including monitoring or measuring exposure.

(c) No employee shall be permitted regular exposure to any substance which may materially impair his health or functional capacity.

(d) All employers shall provide prompt information to employees when they have been or are being exposed to toxic materials and harmful physical agents in concentrations or at levels in excess of those prescribed in the applicable safety and health standards. This information may be fulfilled by:

- (1) Observation by employees of the monitoring or measuring of such materials or agents;
- (2) Employee access to the records of such monitoring or measuring after notice of exposure, and explanation of said monitoring or measuring procedures where necessary;
- (3) In addition to the above, information shall be provided to the employees of corrective action being taken.

“§ -8 Employee responsibility and rights. (a) Employee compliance. Each employee shall comply with occupational safety and health standards and all rules, regulations and orders issued under this chapter which are applicable to his own actions and conduct.

(b) Complaints to the department. Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(c) Opportunity for employees to participate in inspections. At the time and place of inspections under § -4(b) (2), (3), and (4), an opportunity shall be provided for employees and their representatives to bring possible violations to the attention of the authorized representative of the director conducting said inspection in order to aid inspections. This requirement may be fulfilled by allowing a representative of the employees and a representative of the employer to accompany the director's authorized representative during the physical inspection of the workplace, or in absence of the employees' representative, there shall be a consultation with a reasonable number of employees.

(d) Notice of nonaction to employees. The department shall notify the employees when the department decides not to take compliance action as a result of violations alleged by any employee or any representative of the employees. This notice shall be sent to the employer who shall post same prominently in the working place. This notice shall state the decision not to take compliance action, the reasons therefor, and the procedures for informal review of such decision.

(e) Discharge or suspension of employee for refusal to engage in unsafe practice prohibited.

- (1) No employer shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee by reason of:
 - (A) his failure or refusal to operate or handle any machine, device, apparatus, or equipment which is in any unsafe condition; or
 - (B) his failure or refusal to engage in unsafe practices in violation of this chapter or of any rule or regulation issued under the authority of this chapter; or

- (C) his failure or refusal to operate or handle any machine, device, apparatus, or equipment in violation of this chapter or of any rule or regulation issued under the authority of this chapter; or
 - (D) his filing a complaint, testifying or otherwise acting to exercise rights under this chapter for himself or others.
- (2) Upon discretion of the director or request, names of complainants may be withheld from the employer.
 - (3) Within thirty days of the alleged act of discrimination, the employee shall file a complaint with the department setting forth the circumstances thereof.
 - (4) The director shall investigate said complaint and if he finds discrimination in violation of this chapter, he may order the employer to provide necessary relief to the employee including rehiring, reinstatement to former job with back pay and restoration of seniority.
 - (5) Nothing in this section shall prevent a penalty being levied against the employer under section 10.

“§ -9 Explosives. (a) Permits and certificates. No person shall manufacture or deal in explosives unless he has obtained a permit therefor and no person shall use explosives unless he has first obtained a certificate of fitness. A certificate of fitness shall only be issued to an individual and shall set forth his competency and provide for his positive identification. Certificates of fitness may be limited as to types or kinds of explosives or to the use of explosives for specific purposes.

(b) Manufacturer's reports; dealer's record and report. Manufacturers shall file a report with the director at the end of each calendar month giving in the report the names of all purchasers and the amount and description of all explosives sold or delivered and such other information as the director may require.

(c) Storage. No person shall have, store, keep, or possess explosives, or suffer them to remain in any building or upon any premises, unless the same are in a magazine complying with rules and regulations of the department governing the classes, type of construction, and capacity of magazines, the quantities and types or kinds of explosives which may be kept in the several classes of magazines, the location of permanent magazines, the safety precautions to be taken therein, and the places where movable magazines shall be kept and the duration of such keeping.

(d) Transportation. No person shall transport or cause any explosive to be transported except in compliance with rules and regulations of the department and without first having secured a permit from the director.

(e) Sale of; permits for purchase. No dealer shall sell or deliver explosives to any person who does not hold a certificate of fitness and a permit for the purchase thereof secured from the director or his authorized subordinates; and no dealer shall sell or deliver explosives except for the types or kinds and in the quantities as prescribed by, and in compliance with all the terms and conditions contained in the permit.

(f) Unlawful use or possession. It shall be unlawful for any person to use any explosives unless he has a certificate of fitness or is using the explo-

sives under the immediate supervision and direction of a holder of the certificate. It shall be unlawful for any person, other than a manufacturer or dealer, to have any explosives in his possession unless he has a permit therefor, or unless he has the explosives in his possession under the direction and for the purposes of a holder of the certificate.

(g) Revocation of permits and certificates. Any permit or certificate of fitness issued under this section may be revoked or suspended by the director on any ground specified in the rules and regulations promulgated under this chapter, or for any violation of this section.

(h) National emergency. Any permit or certificate issued under this section may, during any time of national emergency or crisis, be suspended or canceled by the director, and all explosives in the possession or control of any person may be purchased or seized and held in possession by or on the order of the governor until such time as the national emergency or crisis has passed, or until such time as the owner thereof and the government of the United States or the government of the State may agree upon some other disposition of the explosives. A national emergency or crisis shall be deemed to exist when such has been so determined under §134-34.

(i) Exceptions. This section shall not apply to the armed forces of the United States or employees of the United States who are authorized by the United States to handle explosives.

“§ -10 Violations and penalties. (a) Any employer or person who violates this chapter, or any occupational safety and health standard promulgated hereunder or any rule or regulation issued under the authority of this chapter, or who violates or fails to comply with any notice or order made under or by virtue of this chapter or under or by virtue of any rule or regulation of the department, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguards, notice or warning required by this chapter or any rule or regulation of the department shall be assessed a civil penalty not more than \$1,000 and not less than \$25.00 for each violation. Each day a violation continues shall constitute a separate violation except that during an abatement period, penalty may be suspended. Posting violations are also specifically covered by this penalty.

(b) Any employer who willfully or repeatedly violates this chapter, any occupational safety and health standard promulgated hereunder, or any rule or regulation issued under the authority of this chapter, shall be assessed a civil penalty of not more than \$10,000 for each violation.

(c) Any employer who willfully violates any standard, rule, or order promulgated pursuant to this chapter and that violation caused death to an employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year or by both. Failure to correct a violation for which an order or citation of arrest has been issued shall be evidence of willful conduct.

(d) The director shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(e) For the purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(f) Civil penalties owed under this chapter shall be paid to the department and may be recovered in a civil action in the name of the department and the State of Hawaii and brought in the district or circuit court for the district where the violation is alleged to have occurred or where the employer has its principal office.

(g) Notice of violation. When an alleged violation of standards has occurred, the department shall promptly issue a written order to the employer who shall be required to post said order in a prominent place. Said order shall include the proposed abatement requirements and within a reasonable time the employer shall be advised of the proposed sanctions.

“§ -11 Appeals. Any order of the director issued under this chapter shall be final and conclusive against the employer unless the employer, within twenty days after a copy of such order is received by him, petitions the appeals board for a review thereof. After hearing, the appeals board may set aside the order or continue it upon such terms and conditions as may be deemed necessary. The filing with the appeals board of a petition for review shall not stay or suspend the operation of the order, and no stay shall be granted by the appeals board pending its decision.

“§ -12 Judicial review. Decision of the appeals board shall be final and conclusive against the employer unless the employer obtains a review thereof in the manner provided in chapter 91 by instituting proceedings in the circuit court of the circuit in which the place of employment, machine, device, apparatus, or equipment is situated or such practice, means, method, operation, or process is employed. The hearing on review shall be on the record and the department shall be deemed a party to any such proceedings. The court shall give precedence to such proceedings over all other civil cases.

§ -13 Trade secrets. Access to trade secrets shall be limited to authorized representatives of the director who shall protect the confidentiality of said trade secrets.

§ -14 Evidence. No record or determination of any administrative proceeding under this chapter or any statement or report of any kind obtained or received in connection with the administration or enforcement of this chapter shall be admitted or used where as evidence, or as discovery, in any civil action growing out of any matter mentioned in the record, determination,

ACT 57

statement or report other than an action for enforcement or review under this chapter.

SECTION 2. Chapter 376, Hawaii Revised Statutes, is repealed upon the effective date of this Act provided that the rules and regulations promulgated under chapter 376 shall be continued until the necessary rules and regulations under the new Hawaii Occupational Safety and Health Law have been promulgated.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 16, 1972.)